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THE CELEBRATION OF THE CENTENARY OF THE SUPREME COURT OF LOUISIANA*

Supreme Court Room,
New Orleans, Saturday, March 1, 1913.

The Supreme Court of Louisiana met at 11 o'clock a. m. on this day in special session to celebrate the centenary of the organization of the Court. There were present on the bench his honor, Chief Justice Joseph A. Breaux, and their honors, Associate Justices Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, and Walter B. Sommerville, the Clerk of the Court, Mr. Paul E. Mortimer, being also in attendance. There were also sitting with the Court as its guests the following judges of the Federal Courts in Louisiana, namely, Hon. Don A. Pardee, David D. Shelby, and W. T. Newman, Judges of the United States Circuit Court of Appeals for the Fifth Circuit now sitting in New Orleans, and Judge Rufus E. Foster, United States District Judge for the Eastern District of Louisiana.

The Governor of Louisiana, Luther E. Hall, the Mayor of New Orleans, Martin Behrman, Very Rev. J. D. Foulkes, S. J., and Right Rev. Davis Sessums, D. D., Episcopal Bishop of Louisiana, occupied seats just below the dais. Ex-Justice N. C. Blanchard and Justice-Elect Charles A. O'Niell were also present.

Besides the foregoing, the ceremony was attended by the Judges of the Court of Appeal of New Orleans, all the District Judges of Orleans and many from the parishes, the Attorney

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General of the State, the City Attorney of New Orleans, and the District Attorney of the United States, the entire local judiciary and lawyers from New Orleans and elsewhere, and officials from all parts of the state.

Edward Douglass White, Chief Justice of the Supreme Court of the United States, had been invited to the ceremonies, but wrote a letter to Mr. H. Gibbes Morgan, expressing his regret at his inability to attend. This letter was read by Mr. Joseph W. Carroll during his opening address.

The invited guests of both sexes filled the auditorium and an orchestra furnished music.

The labor of preparation for the centenary and the management of the same on this day devolved on an Executive Committee appointed by the Court, Mr. Henry P. Dart, Chairman, Messrs. George Denègre, H. Gibbes Morgan, J. C. Henriques, J. J. McLaughlin, W. A. Bell, and Henry L. Favrot.

Mr. Bell served as Chairman of the Subcommittee on Programme, Mr. J. Blanc Monroe as Chairman of the Finance Committee, and Mr. W. O. Hart as Chairman of the Publicity Committee.

Besides this the Court created a committee of one hundred lawyers selected from all parts of the state to assist the Executive Committee.

Mr. John Dymond, Jr., was Chairman of the Reception Committee.

Mr. Joseph W. Carroll, President of the Louisiana Bar Association, acted as Master of Ceremonies.

The session was opened with the usual formality, and the order of the day was observed as set forth in the following program:

CEREMONIES.

Saturday, March First, Nineteen Thirteen, in the New Court House Building.

En Banc—The Supreme Court of Louisiana and the Judges of the Federal Courts.

Invocation—Very Rev. J. D. Foulkes, S. J.

Minutes—(Monday, March 1, 1813.) Paul E. Mortimer, Clerk.

Opening Address—Joseph W. Carroll, Master of Ceremonies.

Address of Welcome—Governor Luther E. Hall.

The Centenary of the Supreme Court—"The History," Henry Plauché Dart; "The Jurisprudence," Charles Payne Fenner; "The Bar," Thomas C. W. Ellis.

Response by the Chief Justice—Joseph A. Breaux.

Benediction—Right. Rev. Davis Sessums, D. D.

The court ordered the several addresses to be preserved as part of the minutes, and they are published herewith.

INVOCATION.

By the Very Rev. J. D. Foulkes, S. J.

God of justice and equity, who didst engrave in man's conscience the natural law of right and wrong and didst promulgate its mandates and prohibitions in all positiveness by Moses on Sinai's tablets of stone, we thank Thee and we invoke Thee! For ten decades, Thou hast been present by counsel and advice among those who in this State of Louisiana were elected to render decisions upon matters of supreme importance; for 100 years Thou hast watched the earnest endeavors of judges, bent heart and soul on finally settling grave questions for or against Thy commandments: "Thou shalt not kill;" "Thou shalt not steal;" "Thou shalt not bear false witness against thy neighbor;" for a century Thou hast given strength and courage to Justices and Associate Justices for the upholding or throwing out of decisions given by lower courts. To Thee we give our thankfulest thanks. Today be Thou auspicious and bless the efforts of those appointed to portray the glories of the past, the needs of the present, and the hopes of the future! During each term of the new century dawning today upon our Supreme Court, may truth be ever the beacon light of our Justices! May their judgments be ever like unto Solomon's, wise, prudent, and just! May their sifting of evidence be as accurate as that of the prophet Daniel, discovering the wickedness of the elders and the innocence of chaste Susanna! When time dissolves into eternity, and the last assize is set up for man's eternal lot, may Thou, unerring, infallible Divinity, welcome to Thy eternal courts each and every incumbent of this high office, with that consoling sentence: "Well done, thou good and faithful servant, because thou hast been faithful over a few things, I will place thee over many!" So be it for endless æons!

MINUTES OF MARCH 1, 1813.

Read by Mr. Paul E. Mortimer, Clerk Supreme Court.

The State of Louisiana:

Be it known that on this day, to wit, on Monday, the first day of March, Anno Domini One thousand eight hundred and thirteen, and in the thirty-seventh year of the Independence of the United States of America, the Supreme Court of the State of Louisiana commenced its session at the city of New Orleans.

Present, the Honorable Dominick A. Hall and the Honorable George Mathews.

Their Honors produced their respective Commissions from the Governor of the State of Louisiana, which, being read, were ordered to be recorded on the Minutes of said Court, and are in the following words, to wit:

"United States of America, State of Louisiana.
"William Charles Cole Claiborne, Governor of the State of Louisiana.

"In the name and by the authority of the State of Louisiana Know ye that reposing special trust and confidence in the Patriotism, Integrity and abilities of Dominick Augustin Hall, I have nominated and by and with the advice and consent of the Senate, do appoint him a Judge of the Supreme Court of the State of Louisiana, and do authorize and impower him to execute and fulfill the duties of that office according to Law; and to have and to hold the said office with all the powers, privileges and emoluments to the same of right appertaining, during good behavior.

"In Testimony whereof, I have caused these Letters to be made Patent, and the Seal of the State of Louisiana to be hereunto annexed.

"Given under my hand at the City of New Orleans, on the Twenty-second day of February, in the year of our Lord one thousand eight hundred and thirteen, and in the year of the Independence of the United States of America the Thirty-seventh.

"(Signed) WILLIAM C. C. CLAIBORNE.

"By the Governor.

"(Signed) L. B. MACARTY,
"Secretary of State.

"I do certify that the within named D. A. Hall on this twenty-fifth day of February, One thousand eight hundred and thirteen,

appeared before me and took the oath of office required by the Constitution of this State and of the United States.

"(Signed) COLSSON, Justice of Peace.

"United States of America, State of Louisiana.
"William Charles Cole Claiborne, Governor of the State of Louisiana.

"In the name and by the authority of the State of Louisiana:

"Know ye, That reposing special trust and confidence in the Patriotism, Integrity and abilities of George Mathews, I have nominated, and by and with the advice and consent of the Senate do appoint him a Judge of the Supreme Court of the State of Louisiana, and do authorize and empower him to execute and fulfill the duties of that office according to Law, and to have and to hold the said office with all the powers, privileges and emoluments to the same of right appertaining during good behavior.

"In Testimony Whereof, I have caused these Letters to be made Patent, and the Seal of the State to be hereunto annexed.

"Given under my hand at the City of New Orleans, on the twenty-third day of February, in the year of Our Lord One thousand eight hundred and thirteen, and in the year of the Independence of the United States of America the Thirty-seventh.

"(Signed) WILLIAM C. C. CLAIBORNE.

"By the Governor.

"(Signed) L. B. MACARTY,
"Secretary of State.

"I do certify that the within named George Mathews did on this twenty-fifth day of February, One thousand eight hundred and thirteen, appear before me and took the oath of office required by the Constitution of this State and of the United States.

"(Signed) COLSSON, Justice of Peace."

Adjourned till tomorrow morning 11 o'clock.

OPENING ADDRESS.

By Joseph W. Carroll, Master of Ceremonies.

Your Honors, Your Excellency, Ladies and Gentlemen:

The occasion which has brought us together this morning is not only unique in the history of the state, but is most interesting in itself.

On this day, one hundred years ago, the Supreme Court of Louisiana was organized under the first Constitution of the state, the year following its admission to the Union.

During that time this court, with its constantly varying membership, has honestly met its obligations to the people of the state and has kept the judicial ermine unsullied from taint of scandal or corruption.

The courts of the state, and pre-eminently this court, typify order as against disorder, law as against lawlessness, right as against wrong. Under our system of government, they are an integral part of the foundation of the liberties and happiness of the people. With the Executive and the Legislature, they constitute the Governmental Trinity, which overlooks and safeguards the state and its people in their various and diverse interests.

Our government is not only one of law, but of written law, and, in the distribution of powers, to the courts has been allotted the duty of construing and applying these laws to concrete cases—even that most delicate duty of annulling by their decrees the written law of the Legislature or the deliberate act of the Executive, whenever such law or such act runs counter to what the people themselves have lawfully decreed in their Constitution for the guidance and limitation of their servants. The courts may, in this sense, be said to be peculiarly the representatives of the people.

It is proper, therefore, that the state, and the court itself, should appropriately notice this occasion, marking, as it does, the completion of a full century of the orderly administration of justice.

The people of the state, both those present here and those of that larger audience of the press, may well pause a few hours from the pursuit of their ordinary occupations, and give thought to their government, to what it means to them, their families, their property, that the laws should be properly made and properly administered, and to their own responsibility for any shortcomings in either.

The layman is prone to think and say that the courts generally are too far removed from the people, and that judicial decisions do not respond readily enough to the advancing ideas of the people at large. They forget that courts are established to

administer and not to create the law. It is not for a court to be influenced by every passing sound, however loud or insistent.

Precedent must, perforce, be the foundation of every stable jurisprudence, and precedent is a thing of yesterday and not of today. It would be neither wise nor just to measure the rights of today by other than the yardstick of yesterday, without fair notice to all—a notice which should come from the lawmaking power rather than the courts.

There will be those who will speak to you of the bench, the jurisprudence, and the bar, and I shall usurp their time but little longer.

Among those who once sat upon that bench, some thirty years ago, was Edward Douglas White, now Chief Justice of the United States. He and former Justice Blanchard are the only surviving ex-justices. The court had hoped to have the former with us today, but higher duties have prevented. He has however, sent an eloquent message addressed to Mr. H. Gibbes Morgan of the Committee of the Bar, which I shall read:

"Washington, D. C.,
"February 4, 1913.

"H. Gibbes Morgan, Esq., New Orleans, La.

"My Dear Sir: I am deeply sensible of the kindness of the Committee of 'One Hundred Lawyers' appointed to make appropriate arrangements for the celebration, on March the 1st next, of the 'Centenary of the Supreme Court of the State,' and much regret that I am constrained to say that I cannot give myself the privilege of accepting.

"At the time fixed the situation as to the work of the court here will be such as to imperatively forbid that I absent myself from Washington. Moreover, as the duty rests upon the Chief Justice of the United States to administer the oath of office to the President-elect on the morning of the 4th of March, it seer to me it would be very imprudent for me to absent myself from Washington at a time so near the date of the inaugural ceremony.

"I earnestly hope the commemorative ceremonies will prove worthy of the occasion, and that they may serve to refreshen the memory of every Louisianian concerning the blessings which have been bestowed upon the state by the faithful discharge by the court of the great duties which rest upon it. Indeed, I trust that

the ceremonies may not only do this, but may serve to revivify and strengthen in the hearts and minds of all the purpose to sustain and perpetuate the court, and thus guarantee individual freedom and representative government by safeguarding the life, liberty, and happiness of all.

"May I ask you to convey to the general committee my appreciation of the generous consideration which they have shown me by extending their invitation, and to accept for yourself personally my warm thanks for the all too kindly and generaus words in which you have conveyed the invitation.

"Always faithfully yours,

"(Signed) E. D. WHITE.

It now gives me pleasure to introduce, for an Address of Welcome, one who really needs no introduction to this audience, his Excellency, the Governor.

ADDRESS OF WELCOME.

By Governor Luther E. Hall.

Your Honors, Gentlemen of the Bar, Ladies and Gentlemen:

I esteem it a very high as well as most pleasant privilege to participate in the ceremonies attending the centennial celebration of the organization of the Supreme Court of this state.

A century is a short time in the history of a state, as history goes, but on this side of the Atlantic the swift tread of a free people has brought forth a record of great accomplishment and progress that has excited the wonder and admiration of the civilized world. The story of Louisiana—the pride of Spain, the hope of France, the glory of the American republic, and the mother of great commonwealths—will echo down the ages with ever increasing interest.

Looking back to the days of Mathews, of Martin, and of Porter, and, recalling the part this court has played, no Louisianian need be ashamed of the record. It has not lacked great minds or rugged integrity or devotion to truth and justice, nor has it failed in meeting the vicissitudes of fortune or the difficult and stormy periods of its existence. Perhaps no court has had more difficult problems to solve or more trying occasions to confront. Through its portals have come the imperishable principles of the civil law as interpreted and developed by the genius

of the French jurisconsults, and its decisions have had an influence in the molding of the jurisprudence of other states accorded to but few other state judiciaries. A past so full of inspiration ought to make for higher ideals and wider standards. Retrospection is vain if it leads to no reflection and affords us no promise for the future.

Nowhere in the world has the judge been crowned as he has been in America. Here he has been intrusted with power given to no other man. It has been his province and duty to protect the independence of the three great departments of our national as well as state governments and to preserve the rights and liberties of the people. The people have bowed to his decisions and have honored him. They have forgiven some human lapses and accepted some flagrant departures from the right as honest errors. In their hearts they have transferred "the divinity that doth hedge a king" to the judge, and marched forth satisfied with the general result. No man has so enjoyed their homage. Has he, the judge, in any measure lost this confidence and respect? This is a question which, at such a time as this, should arouse serious thought.

If a change has come or is coming over the people, there must be causes, and the members of the judiciary should seek carefully to ascertain and remove the sources of irritation. Judges cannot draw around themselves their robes of dignity and look on with indifference while the people complain. The permanence of our free institutions depends upon the confidence the people have in the incorruptibility of their courts. It is to the courts that they must go for an interpretation of their organic as well as statute laws and for the vindication of their private rights. "In despotic governments," says Montesquieu, "there are no laws, the judge himself is his own rule. * * * In republics the very nature of the constitution requires the judges to follow the letter of the law; otherwise, the law might be explained to the prejudice of every citizen in cases where their honor, property, or life is concerned."

When the people believe that their judges, in the determination of cases, consult the wishes of powerful political and other interests and not the law; when they believe that their laws are set aside or twisted and distorted by construction to subserve the purposes of such favored interests; and when they believe that

all men are not equal before the law as administered by the courts—then all faith in the established form of government will have been lost and new and dangerous experiments will be attempted.

There is more light than in former days. Powerful rays are illuminating the innermost recesses of places of power in every department of government. Printed messengers are carrying into every household facts as well as theories. Where there was but one pen that could correctly analyze an opinion of Marshall, there are thousands today that can correctly tell millions of readers the full scope of a decree announced by any court in the land.

"The fierce white light that beats upon a throne" is but as a candle to the searchlight that now throws its rays upon the bench. It penetrates the gown, the garment, and through the very bones of the man who expounds the law in high places. To live in this light and retain the love and respect of the people, and while speaking with authority to hold the loyal devotion of the past, a judge must have more than learning or talent or even genius itself. He must have manhood, broad humanity, sturdy honesty, and unswerving devotion to right and justice. Platitudes, pretenses of patriotism, and tricks of logic shrivel in this light like moths. These cannot stand as law in the great forum of the people any more than in the lesser but more learned tribunals of the bar.

While assembled here in good fellowship and in profound respect for our high court, now celebrating its centennial, let us wish each member of it good health and happiness, and indulge the confident hope that it will grow in the confidence and esteem of the people, that correct standards will always be maintained, that the principles of the civil law will be preserved in essential purity, and that our jurisprudence will answer at all times to the old definition in that it will be truly the science of what is just and what is unjust.

The History of the Supreme Court of Louisiana.

By Henry Plauché Dart, of the New Orleans Bar.

In any historical survey of a court of last resort the subject divides itself naturally, as Cæsar divided all Gaul, into three parts.

The committee in charge of this ceremony has, in this spirit, separated the topic of the day into the court, its jurisprudence, and its bar, and has assigned a speaker to each division of the general subject. The first subsection has fallen to my hands, and I shall treat as rapidly and succinctly as possible the constitutional, legislative, and judicial history of the court, with passing reference to the judges of the same. Of course, the limitations of time and a due concern for the rights of those who follow would reduce the tale to a most meager limit, and therefore I have been asked to present orally the substance of the topic and to preserve the manuscript for future use.

Before entering upon the history of the Supreme Court it may be useful and interesting to tell the story of the two courts which to a certain extent held the same position in the territorial period. Indeed, from these lineal predecessors of the Supreme Court that tribunal inherited certain judicial features and methods of procedure which may be said to make an umbilical connection between the two systems.

I. The Governor's Court, 1803-4.

The Louisiana Territory ceded by France was taken over by the United States under the authority of the act of Congress of October 31, 1803, which, among other things, provided that all the military, civil, and judicial powers exercised by the officers of the existing government should be exercised temporarily by such person or persons and in such manner as the President of the United States should direct, for the purpose of maintaining and protecting the inhabitants of Louisiana in the full enjoyment of their liberty, property, and religion. (2 Statutes at Large, 245.)

Under this authority President Jefferson appointed James Wilkinson, General of the United States Army, and William C. C. Claiborne, then Governor of Mississippi Territory, Commissioners to receive delivery on behalf of the United States, and on December 20, 1803, these Commissioners took possession of the country covered by the cession.

In addition to the powers conferred upon the two Commissioners, the President gave Claiborne a commission "authorizing him provisionally to exercise within the ceded territory all the powers with which the Spanish Governor General and Intendant

were clothed, except that of granting lands." (Martin's History, Howe's Edition, 295.)

Claiborne was a Virginian who had been admitted to the bar in Tennessee, and at this moment was about twenty-eight years old. Referring to his appointment, Gayarre says (4 History of Louisiana, pp. 1-3):

"The immediate effect of that cession was to vest all the powers of the defunct government (a sort of Gallic and Spanish hybrid(in Governor Claiborne, until Congress should legislate on the organization of the government of the new territory. Thus this officer, as he informed the inhabitants in a set proclamation, had suddenly become the Governor General and the Intendant of Louisiana, uniting in his person all the authority severally possessed by those two functionaries under the despotic government of Spain. Well might he be astonished at the strange position in which he was placed, for he, a republican magistrate, found himself transformed into an absolute proconsul in whom centered all the executive, judicial, and legislative authority lately erercised in their respective capacities by the superseded Spanish dignitaries.

* * * *

"Claiborne's first measure was to organize the judiciary, and he established, on the 30th of December, 1803, a Court of Pleas composed of seven justices. Their civil jurisdiction was limited to cases not exceeding in value three thousand dollars, with the right of appeal to the Governor when the amount in litigation rose above five hundred dollars. That tribunal was also vested with jurisdiction over all criminal cases in which the punishment did not exceed two hundred dollars and sixty days' imprisonment. Each of these seven justices was clothed individually with summary jurisdiction over all debts under one hundred dollars, reserving to the parties an appeal to the Court of Pleas; that is, to the seven justices sitting together in one court." (Id.)

Under this system it appears the Governor retained original jurisdiction in all civil and criminal matters, save as qualified, and also appellate civil jurisdiction over the Court of Common Pleas.

In assuming these judicial powers the Governor conceived that he was acting within the scope of his appointment. There is no reasonable ground for doubt the Spanish Governor General

and Intendant had exercised, each in his own department, the same judicial powers in civil, criminal, and admiralty matters, and it is also true that they were the sole judges in their several courts. (Martin, 212.) These officers, however, consulted with and were advised by a legal assistant, who was, roughly speaking, an attorney general to the court.

The commission from Jefferson clearly vested in Claiborne the powers that had previously been exercised by each of these officials. It cannot be controverted, however, that the greater part of the civil and criminal concerns of Spanish times had passed through other functionaries, and that in New Orleans particularly the Cabildo was the court nearest to the people. (Id. 210.) Although the Governor General sat therein or had the right so to do, the average litigant felt the influence of a number of persons thus sitting as judges and participating in final judgments. Under this method the dead weight of a one-man court had not fallen upon the litigant, as it now fell under Claiborne's system.

Contemporary history proves that no other act of the Governor caused more dissension than this creation of the Governor's Court. Unfortunately Claiborne could not use either of the primary tongues of the people; indeed, it is said that at this time he had not acquired a reading knowledge of either French or Spanish, nor does it appear that he was able to call to his aid any person having at once the languages and the professional skill. He has written of this experience that he tried to apply to each case his knowledge of law and his view of equity and justice. It is probable that the same complaint would have been made against any judge named by him, had he possessed the right to substitute a regularly organized court in his stead—a power which, under the letter of his appointment, seems not to have been granted.

Considering that in its elements the Spanish rule did vest great and unusual power in the Governor General and Intendant, the complaint against Claiborne for exercising the same powers can only be explained by the factious spirit of criticism started by the French agent, Laussat, and assiduously cultivated by deposed office holders and disgruntled land speculators. There was undoubtedly a reasonable ground of complaint on the part of the American element because they were emigrants from a country

where such power was unknown. The effect of these arguments was to create among the Creoles a feeling of fear and distrust of the American government, and all parties joined in an effort for a change. Public opinion was whipped to a white heat by mass meetings and discussions, in which every evil motive was attributed to the President, to Congress, and to the local officers. The act of 1803 was confessedly temporary, but its duration was shortened by these appeals.

On March 26, 1804 (2 Statutes at Large, 277), Congress divided the Louisiana Purchase into two territories, and gave the name of Orleans to all that section lying south of the thirty-third degree of north latitude, on the west side of the Mississippi river, and south of the Mississippi Territorry on the east side. Besides providing for the appointment by the President of a Governor and a Secretary, provision was also made for the appointment by him of a Legislative Council of thirteen "of the most fit and discreet persons of the Territory," and, most important of all, for the appointment of a Superior Court.

The judicial power was vested in this Superior Court and in such inferior courts as the Legislature might from time to time establish. The Superior Court was composed of three judges, any one of whom should constitute a court, to hold office for four years. It was vested with jurisdiction in all criminal cases, and exclusive jurisdiction in all those which were capital, and original and appellate jurisdiction in all civil cases of the value of one hundred dollars. All capital cases were to be tried before "a Jury of twelve good and lawful men of the vicinage," and in all cases, criminal and civil, in said court the trial should be by jury, if either of the parties required it.

The salaries of the judges were fixed at $2,000 per annum, payable quarterly out of the revenues of impost and tonnage accruing within the territory.

The laws in force in the territory not inconsistent with this act were continued in force until altered, modified, or repealed by the Legislature; and the act of October 31, 1803, was continued in force until October 1, 1804, on which day the act of March 26, 1804, was to take effect and to continue for one year and until the end of the next session of Congress thereafter.

By virtue of these provisions the Supreme Court, as Claiborne called it, or Governor's Court of the Territory of Orleans,

as it is known in history, maintained its existence for about one year, and until the Superior Court was organized on November 9, 1804. The records of the former court were, on March 7, 1805 (chapter XVI, p. 86, Laws of Orleans Territory, 1805), ordered to be transferred to the office of the Clerk of the Superior Court of the Territory.

As changes in our judicial system have occurred, the archives of abandoned courts have been transferred from room to room, until finally no man was left who could remember the hiding. place or graveyard of the records of the early courts. During the past twelve months a search has been in progress by the Clerk of the Civil District Court, assisted by a committee of lawyers appointed by the Judges, and records innumerable have been recovered and removed to the Archive Room of this building.

Among these records, and almost the last to be found, we have gathered a nearly complete file of the Superior Court of the Territory, and a few from the Governor's Court. Out of the latter we have taken a case which seems to be a typical representative of the practice before Claiborne sitting as sole Judge. This was an original suit filed May 23, 1804, by Anselme Coudrain against Jean Bagneris, to recover from a curator or tutor the proceeds of a wasted estate. It is in the form of a bill in equity, and was evidently drawn by a careful pleader in that system. Its caption reads, "In the Court of His Excellency," and it is addressed as follows: "To His Excellency, William C. C. Claiborne, Governor of the Mississippi Territory, exercising the powers of Governor General and Intendant of the Province of Louisiana." It is No. 87 of the Superior Court of the Territory of Orleans, and was evidently removed into that court under the terms of the act just quoted.

It seems from all evidence attainable that Claiborne exercised in this court the judicial powers of his predecessors and the usual authority of an American law court, and he added thereto the equitable jurisdiction of the English chancellor. It is doubtful whether any man ever possessed in this country so much supreme power, being at once the lawmaker, the ruler, and the judge of last resort. He therefore holds a unique position in American judicial history.

Claiborne was a voluminous writer of diaries and reports, but this material is scattered and only a small portion of it has

been printed. When the opportunity serves to rewrite the story of the Governor's Court in the light to be afforded by a study of his writings and the archives of the court, a distinct addition may be made to the sum of human knowledge. Until this shall have been done the historian must suspend judgment on the contemporary charge of usurpation, ignorance, and maladministration urged against that magistrate; for he is, at least, entitled to the benefit of the presumption of law which attaches to the actions of all officers.

II. The Superior Court of the Territory of Orleans, 1804-1813.

President Jefferson appointed Duponceau, of Pennsylvania; Kirby, of Connecticut; and Prevost, of New York—to form the Superior Court of Orleans created by the act of March 26, 1804, whose provisions have just been noticed. The first-named declined; the second died en route to New Orleans, after accepting and before the organization of the court; and the third, John Bartow Prevost, accepted and organized the court in New Orleans on Monday, November 5, 1804. He was the son of a British officer of the Revolution, whose widow had married Aaron Burr, Jefferson's competitor for the Presidency and Vice President during his first term. At the time of Prevost's appointment he was holding a judicial office in New York City.

The first session of the Superior Court was held at the City Hall in New Orleans, which was probably the American designation of the building now called the Cabildo, the generic name for the municipal organization under the Spanish régime.

The vacancies on the bench were not filled, and Prevost held court alone until 1806; that is, until after the act of Congress of March 2, 1805, went into operation. 2 Statutes at Large, 322. By this act a new form of government was established for the territory, to be modeled on the one then existing in the adjoining Mississippi Territory. Provision was made for the appointment by the President of the officers, who were to be as prescribed in the Ordinance of 1787 for the government of the Northwest Territory.

An elective general assembly was created, which was composed of twenty-five representatives. The people were vested with all the rights, privileges, and advantages possessed by the adjoining territory, save that the Statute of Descent and Distri-

bution and the Sixth Article of the Compact in the Northwest Ordinance should not apply. The act of March 26, 1804, was repealed in so far as it was in conflict with this act to take effect on and after November 1, 1805.

No change was made in the Superior Court system, and the vacancies on that bench were filled by the appointment of William Sprigg, of Ohio, and George Mathews, Jr., of Georgia, whose service began early in 1806. Prevost seems to have retired toward the end of that year possibly, as suggested by Claiborne on an earlier occasion, because the judge had a large family and could not support himself on the meager salary of the office. He practiced law here for many years thereafter. Joshua Lewis, of Kentucky, took Prevost's place in January, 1807. Sprigg retired in 1808, and was succeeded by John Thompson, of Orleans, in that year. He died in 1810, and François-Xavier Martin, of North Carolina, was appointed in his stead on March 10, 1810. Judge Martin was at the time of his appointment serving as judge in the adjoining Mississippi Territory.

We have no printed reports of the work of the court earlier than the fall session of 1809. Its archives had been lost—that is, no one knew what had become of them—but quite recently a number of its records were discovered under the accumulated rubbish of a century, in a corner of an attic in the old Civil Court Building at Jackson Square. These records have been removed into the new Court Building and are now being restored and arranged by the clerk of the last-named court. The student of the origins of our judicial system may doubtless find here a rich reward for his patient labor.

Upon the accession of Martin in 1810 he was troubled by "the dearth of correct information in regard to the decisions of the court before his arrival," and he set about the preparation for publication of the cases argued in his time and that immediately preceding his appointment. He added the instinct of a reporter to the experience of a practical printer. The two erudite volumes (1 and 2 Martin, Old Series) which were printed under his supervision in New Orleans in 1811 and 1813 are still resorted to as authority. Indeed, they are a mine of the old learning. The title page of both volumes carries an extract from the instructions of the Empress of Russia to the commission which she created to codify the laws of that empire:

"Courts render decisions; these should be treasured; they should be circulated, so that the judgment of today will be as that of yesterday, and so that the property and life of citizens should be as certain and fixed, even as the Constitution of the state."

Martin continued to publish the reports of the Supreme Court of Louisiana until 1830, and each title page bears some quaint citation of this kind. The committee in charge of this celebration has preserved one of these on the memorial now before you. It is an epigram from Cicero's oration in defense of Sulla: "Status enim reipublicæ maximæ judicatis rebus continetur," or, roughly paraphrased, "The welfare of the state depends greatly upon the respect for settled decisions."

An essay might be written on the relation between these maxims and aphorisms of the law, and the substance and style of the literary matter of Martin's opinions.

In the preface to the first volume Judge Martin announces convictions which we may well believe were also the opinions of his associates. They merit perpetuation here as part of the history of our judicial system.

Referring to the difficulties of their task and the small number of the judges, and the remote places in which they sat, making it often impossible for more than one judge to be present, he says:

"It has been indispensable to allow a quorum to consist of a single judge, who often finds himself compelled, alone and unaided, to determine the most intricate and important questions, both of law and fact, in cases of greater magnitude as to the object in dispute than are generally known in the state courts; while from the jurisprudence of this newly acquired territory, possessed at different periods by different nations, a number of foreign laws are to be examined and compared, and their compatibility with the general constitution and laws ascertained, an arduous task anywhere but rendered extremely so here from the scarcity of the works of foreign jurists. Add to this, that the distress naturally attending his delicate situation is not a little increased by the dreadful reflection that, if it should be his misfortune to form an incorrect conclusion, there is no earthly tribunal in which the consequences of his error may be redressed or lessened."

Feeling that the decisions might not receive elsewhere that

recognition which older courts enjoyed, he modestly confines his usefulness to his own field, and as to this with equal modesty he says:

"It is true that no judge in deciding any future question will think his conscience bound by the opinion of any one of his brethren or any number of them less than a majority, but he may derive aid or confidence from the knowledge of anterior decisions, the arguments of counsel, and the opinions of another judge in points on which he has to decide. In matters of practice he will at times conform himself to what has been already done, though had there been no determination he might have suspended his assent."

It was fortunate for the new state that for eight years anterior to its entry into the Union men holding such sentiments had been in position to lay the foundations of its law. Two of these Judges, Mathews and Lewis, were of scholarly instincts and had been trained in the common law. On their accession to the bench they knew little French and nothing whatever of the civil law. Martin, considered from any angle, was a profound scholar. His legal mind had also been formed in the common-law field, but he had the advantage of the language of his birthplace (France), and he had, besides, studied the masters of the civil law con amore; indeed, it is said that his edition of Pothier on Obligations was translated from book to type at his printer's case in North Carolina. This early American imprint is, by the way, one of the rare treasures of the legal bibliophile.

The act creating the territory of Orleans did not in words impose the common law, and, on the contrary, left the Governor and Legislative Council free to prescribe in all matters not inconsistent with the enabling act. President Jefferson, however, was very anxious to bring the territory into legal harmony with the other states, and under his suggestion Governor Claiborne exerted himself to impress the common law in all its features upon the new judiciary.

The territory was divided by the Governor and Legislative Council, in April 1805, into twelve counties, namely, Orleans, German Coast, Acadia, La Fourche, Iberville, Pointe Coupée, Atacapas, Opelousas, Natchitoches, Rapides, Ouachita, and Concordia. A county court of one judge was assigned to each, and contested cases were triable by jury, and their verdict was "con-

clusive between the parties as to the facts thereby decided." The judge decided all points of law on such jury trials, and provision was made for a bill of exceptions to cover the facts on which such question of law was raised and decided. See Laws of 1805, First Session, chap. 25, pp. 144-209, approved April 10, 1805, particularly section 6 thereof.

By sections 16 and 17 of this act the right of appeal was granted to the Superior Court, on which appeal the case was to be heard on the original pleadings, but either party could produce new proofs in that court, and could also amend his pleadings "so as to bring the merits of the case completely before them," and the appellate court was authorized to "give such judgment as the nature of the case may require, and to issue execution thereon."

On the same day, April 10, 1805, an act was signed "Regulating the Practice of the Superior Court in Civil Causes." This statute and the one previously discussed are familiarly regarded as the lineal predecessors of our Code of Practice, which assimilated the elements of both statutes.

In this Superior Court act the requirement of trial by jury became optional with the parties and the right was conferred on the court to grant a new trial whenever "it shall appear that justice has not been done." The court was also granted power to make rules for regulating the practice, not inconsistent with the laws of the territory. See Laws of 1805, First Session, chap. 26, pp. 210-260.

By the Law of 1805 (Second Session, chap. 2, pp. 30-31) the permanent seat of justice of the Superior Court was fixed in the county of Orleans, but the court was required once in each year, between June 1st and November 1st, to "go circuit" through all the other counties of the territory and the judge of the county court was required to attend the Superior Court in its sessions. The judge or judges going circuit were allowed $800 for their traveling expenses.

By the act of March 31, 1807, (chap. 1, page 2), the state was divided for the first time into appellate districts and five of these were created. The Superior Court was directed to hold sessions at certain fixed periods in Donaldsonville, Pointe Coupée, Rapides, and Opelousas for the four country districts; while St. Beranrd, Plaquemine, St. Charles, and St. John were incorporated

into the New Orleans district, and its appeals made returnable at that city.

Under this legislation and its own rules, it was common practice in the Superior Court to try appeals by jury. Bayon v. Rivet, 2 Mart. (O. S.) 148, and Brooks v. Weyman, 3 Mart. (O. S.) 9. Aside from this peculiarity, the court seems to have found a way to review all the facts on appeal. The early rules have not been found, and there is little in the printed reports to explain the manner of bringing up the facts. Possibly the practice of the time is reflected in the language of the new Supreme Court of the state in one of its first decisions (Longer v. Pugean, 3 Mart. [O. S.] 221), to the effect that judgments would not be reversed or affirmed, but the appeal would be dismissed, unless it be shown "that the whole case is before us, or, in cases brought up on exceptions to the opinion of the judge, that the requisites of the law have been complied with."

Meanwhile the Legislature was busy with many features of law and practice, and by the time the first Constitution of the state was framed most of the familiar things in our law and practice had been created or were in process of development. A comparison of Martin's two volumes of Territorial Reports with these contemporary statutes from 1804 to 1812 will show that the court was equally impregnated with the new ideas. The most important development of the era was, of course, the Digest of the Civil Law, or first Civil Code of Louisiana, which was adopted, after much opposition, by the Legislature of the territory. Chapter 29, pages 120-128, of the Laws of 1808. This work was the frame upon which we later builded the Civil Code of 1825. The Code of 1805 confirmed the civil law as the fundamental principle of our jurisprudence, but it required much effort on the part of its partisans to maintain the supremacy. The common law was not distinctly repudiated until the constitutional convention of 1812 settled the question.

When the state convention met in 1812 to frame a constitution, the Superior Bench was composed of Mathews, Lewis, and Martin. The latter was just turned fifty; the others somewhat below that age. Notwithstanding the provision in the Schedule saving all officers until their successors were qualified, a question was raised after the adoption of the Constitution, and before the creation of a judiciary, controverting the right of these

federal appointees to continue to act as judges. Indeed, the people of the Florida parishes declared the judges to be usurpers, and threatened to prevent the session of the court in that district. The judges decided the controversy in the form of a joint letter to the senate, holding that under the Schedule they had become part of the state government, and that they had accordingly resigned their territorial commissions and were now de facto judges of the Superior Court of the State of Louisiana. The reasoning through which the judges reached this conclusion still commands our respect. It is at once the first and one of the best constitutional arguments in our reports. See 2 Martin (O. S.) pp. 161-170.

Under this ruling, which seems to have convinced the doubters, the court sat as the Superior Court of Louisiana from the spring of 1812 until the organization, on March 1, 1813, of the Supreme Court created by the Constitution of 1812.

The Legislature confirmed this view by appropriating $2,500 to each of the judges for salary as state judges. See Acts of 1812, chapter 21, p. 66.

The court's opinions in its new capacity are printed in 2 Martin's (O. S.) pp. 171-356, and include several important questions, whether considered from the point of view of the nature of the case or of permanency as authority. Thus, Desbois' Case, 2 Mart. (O. S.) 185, held that all the inhabitants of the territory became ipso facto citizens of the state of Louisiana and of the United States as a result of the admission of the state into the Union, and without the formality of naturalization. Another, the Navigation Canal Case, thrice argued, famous in its time and still read with interest, was finally decided in this interregnum. Mathews and Martin wrote opposing opinions, each exhausting the ancient law concerning servitudes of drain, and neither convinced the other. See Orleans Navigation Co. v. New Orleans, 2 Mart. (O. S.) 10; Id. 2 Mart. (O. S.) 214; Id. 1 Mart. (O. S.) 269.

Still a third case was Livingston v. Cornell, 2 Mart. (O. S.) 281, also of first rate importance, until its conclusions were set aside by legislation. It was here ruled that it was against good morals for a lawyer to share contingently in the results of litigation.

These slight references to its jurisprudence do not by any means exhaust the interregnum cases, nor do they touch at all the hundreds of rulings in volumes 1 and 2 of Martin.

The Superior Court, as we have noted, was one of first instance in all criminal matters and in certain civil matters. It was also an appellate court in all other civil causes, and, of course, was the only appellate court in the territory. It will be readily understood that under such conditions the judges were an important element in the reorganization and rebuilding of the government.

III. The Supreme Court of Louisiana, 1812-1846.

The Supreme Court of Louisiana was created by the first Constitution, adopted January 28, 1812, and approved by Congress April 30, 1812. While Claiborne called the court of 1803-4 by the same name, he had no authority for so doing. This designation has remained unchanged through subsequent constitutional mutation. It was here made the highest court of the state, and that still is its distinctive feature.

By article 4 of the Constitution the court was to be composed of not less than three nor more than five judges. The title justice does not appear until the Constitution of 1845. They were to be appointed by the Governor, to serve during good behavior. The salary was fixed at $5,000. No professional qualification was required, a suggestive omission because at that period laymen occupied similar positions in other states, but the Legislature corrected this omission immediately.

The jurisdiction was exclusively appelate, based on a money value in excess of $300. No criminal jurisdiction was conferred and none was ever exercised. The question was promptly presented and decided in Laverty v. Duplessis, 3 Mart. (O. S.) 42 (1813). Thirty years afterwards, in April, 1843, the Legislature (Act 93, p. 59) created a Court of Errors and Appeals in Criminal Matters, sitting in New Orleans, made up of three district judges from the county district, selected from the body of the judges. This court served from July, 1843, to February, 1846. Its decisions are reported in 12 Rob. (La.) pp. 513-619. It ceased with the adoption of the Constitution of 1845. The judges who served this court were Thomas C. Nicholls, George Rogers King, Isaac Johnson, with William D. Boyle temporarily in February, 1846. This tribunal has often been confused with the Supreme Court, but, as we have shown, it was an independent court, having no connection whatever with the former court.

The Constitution of 1812 empowered the Legislature to organize the judiciary, and no restriction was placed on it regard-

ing trial by jury or the course at common law. It was, however, prohibited from adopting any system of laws by general reference, and was also required to define the particular law to be enacted. This was the culmination of one of the great issues of the territorial times, and the phraseology was adopted to prevent any attempt to bring in the common law by reference or jurisprudence. The civil law had obtained legislative recognition in the Digest or first Civil Code of 1808, but the question was still acute when the convention disposed of it.

The Constitution further required the judges to refer in every definitive judgment to the particular law in virtue whereof such judgment was rendered, and further prescribed that they should in all cases "adduce the reasons on which the judgment is founded." Our ancestors believed they could in this way keep down the judicial imagination, mindful of the thought, which was prevalent then and which is not yet wholly eradicated, that only the Lord could point out the law on which some judgments are based. Indeed, it is said, though I hope you will not press me for the authority, that even He is occasionally constrained to pass the point on to the ruler of the Subordinate Kingdom.

Martin's scornful reference to this injunction (3 Martin, 351) bore fruit in after years. The makers of the Constitution of 1864, with canny prevision, required their judges to refer to the particular law "as often as it may be *advisable* so to do." and their contemporaries were quick to point out that the court of that period took much comfort out of that provision. In the Constitution of 1868 it was changed to "practicable," and in that sense it appears in all succeeding charters. Even in its modified form it must be a great relief to the judicial conscience.

While on this subject it ought to be added that by the act of February 17, 1821, p. 98, the Legislature required "each and every of the" judges of the Supreme Court to deliver separate and distinct opinions in each case "seriatim, commencing with the junior judge of such court." This was fulfilled by the court in a most unexpected way. Each judge wrote, "I concur in this opinion for the reasons adduced." Breedlove v. Turner, 9 Mart. (O. S.) 380-381. On February 27, 1822, the law was repealed. Acts 1822, p. 24.

The first Legislature of Louisiana met on July 27, 1812, but it was not until the second session, which convened on November

23, 1812, that plans were devised for a judiciary. Claiborne survived his territorial unpopularity and became the first elected Governor of the state. The delay in organizing the court was due partially to opposition to his views. Finally, on February 10, 1813, he affixed his signature to the first Judiciary Act of Louisiana. Laws of 1813, pp. 18-34.

The first section established a Supreme Court of three judges "learned in the law," any two of whom would form a quorum. Precedence ran by dates of commissions, and, these being equal, then by ages of the judges. Out of this grew the title of Presiding Judge, by which Hall, Mathews, and Martin were in due course designated. Appeals were to be heard on transcripts (in the Superior Court the original record had been brought up), and these should contain "the proceedings in the case and all other documents on file in the same," and the court was directed to "hear the appeal on the pleadings and documents so transmitted."

Sections 10, 11, and 13 authorized the court to re-examine, reverse, or affirm any final judgment, and to render such judgment as the nature of the case should require. It was provided, however, that there should be "no reversal for any error of fact, unless it be on a special verdict, or on a statement of the facts agreed upon by the parties or counsel, or fixed by the court."

There was a particular direction to reverse no judgment or decree for any defect or want of form, but to "proceed and give judgment according as the rights of the cause and matter in law shall appear to them, without regarding any imperfection or want of form in the process or course of proceeding whatsoever."

Section 17 gave supervisory power in aid of jurisdiction, and section 18 the right to make "all needful rules for regulating" the practice of the court not inconsistent with this statute or the general law.

A strict construction of this statute led the court at once to the conclusion that it could not review the facts "unless the whole case was before them" (Brooks v. Weyman, 3 Mart. [O. S.] 13-14), and in 1817 (Acts, pp. 24-44) the Legislature met this situation by providing that either party could require the clerk to take down the oral testimony as given by the witness, to be transmitted to the Supreme Court and to serve as a statement of facts. Acts 1817, pp. 24-44. This was speedily construed (1819) to mean that the notes of evidence constituted a state-

ment of facts, without any certificate or other formality. Barnwall v. Harman, 6 Mart. (O. S.) 722. This statute was incorporated into the Code of Practice of 1825 as article 601, and is the base upon which rests the right of this court to re-examine all the facts without regard to technical forms in use elsewhere, or for that matter, which might be used under our own code.

In the early days, and, indeed, within the memory of many men still practicing, all testimony was reduced to narrative form, save where particular questions and answers were required to be taken down. The old rule worked well in its time, and it is curious that, after decades of swollen transcripts, the trend of legal reform is toward our ancient practice.

By the Constitution of 1812 the state was divided into the Eastern and Western Appelate Districts. Appeals from the former were returnable at New Orleans and from the latter at Opelousas. The Legislature was empowered to change the last-named at intervals of five years. The court was required to sit in New Orleans from November to July, inclusive, and in Opelousas from August to October, inclusive. This was a day of limited transportation facilities, and the mind dwells uneasily on the spectacle of our ancestors traveling over the face of Louisiana to the seat of justice in the heats of June, July, August, and September; nor can we fail to be impressed regarding the effect of that uncomfortable season on the judicial temperament. Legend preserves many tales of the habits of the bar of this saddlebag time, and, if half that is told true, the fraternity made an Elizabethan holiday of the journey, with other consolations besides. As to the judges, the record is more silent, but the office must have had rare attractions, for, of three original appointees, one lived out a long life with unsoured disposition and died in office; while another held on until he was pried out of his seat by a new Constitution, after more than 30 years of possession.

The act of 1813 required the Supreme Court to hold its first meeting in New Orleans on the first Monday of March of that year, and on that day, the first of the month also, Dominic A. Hall and George Mathews met in the building called in old days the Government House, and used at this time by the new state officials for public purposes. They presented commissions from Governor Claiborne dated respectively February 22 and 23, 1813, and ordered the same spread upon the minutes. Several candidates for admission to the bar were examined and admitted, in-

cluding some of the best-known men of that period, and the court adjourned until the succeeding day, when more candidates were admitted.

On March 9, 1813, Pierre Derbigny presented his commission from Claiborne, which was placed on the minutes, and the court had its full complement of judges. The delay in his commission was due to opposition in the Senate, which first rejected and later confirmed the nomination.

On March 11, 1813, Prevost, ex-judge of the Superior Court, brought forward the first business. He moved for an appeal to this court from a final judgment of the Superior Court rendered in the interregnum previously discussed. The court took time to consider, and on March 15, 1813, decided that the right of appeal created by the Constitution of 1812 applied only to the judicial system created or which should be created thereunder, and that the late Superior Court was no part of that system and had no concern with it. Remembering, however, the famous de facto decision in which two of the present judges were concerned (3 Mart. [O. S.] 2-6), the court hastened to add that the Superior Court had retained its original authority by virtue of the Schedule of the Constitution of 1812, which was in effect a continuation of its former jurisdiction; that it was an independent creation of a different sovereign, which could not have its powers added to or circumscribed by state legislation; and that its decisions were final and irrevocable. Thus, with one bold stroke, the court drew a line between itself and the ancient régime, cleared its slate of old business, and left the judges free to make new jurisprudence.

The men who thus set in motion the career of the court which is today celebrating its one hundred birthday were all immigrants. Hall, it has been variously said, was an Englishman, or a South Carolinian. Mathews was born in Virginia, but spent his youth and young manhood in Georgia, and his father was at one time Governor of that state. Derbigny was born in France. He claimed noble extraction, and was indeed an émigré of the Revolution of 1789. All were men of reputation and capacity, and had seen service in Louisiana and Mississippi during the preceding ten years. Derbigny alone had had no previous judicial training.

Hall retired on July 3, 1813, to take office as the first federal district judge of Louisiana. It is said his principal motive for thus promptly exchanging one life position for another was the babel of foreign tongues which immediately smote his judicial

ear. He had scarcely a working knowledge of French and none of Spanish, and between the civil law and the French advocates he judged his hope of fame and his happiness of mind to lie in a court which would not be called upon incessantly to master and adjudicate these new and foreign ideas of jurisprudence. His late colleagues found it necessary some years afterwards (1821) to declare by rule they would not admit to practice any candidate who did not know the "legal language of the country." 9. Mart. (O. S.) 642.

The vacancy made by his resignation became a pawn in a new political muddle stirred up between Claiborne and his Legislature. It is said that five different names were submitted to and rejected by the Senate, and the impasse was finally avoided by a compromise whereby on January 1, 1815, Francois-Xavier Martin, Attorney General of Louisiana, assumed the judgeship whose duties he had so recently laid down, and Etienne Mazereau, the idol of the Creoles, became Attorney General in his place.

Meantime, from July, 1813, to January 1, 1815, the sessions of the court were held by Mathews and Derbigny, and in the February term of 1815 Martin began his service on the Supreme Bench, destined to continue longer than any other judge of that court down to this time. In 3 Mart. (O. S.) 329, Martin says the "din of war prevented any business being done during that term"; but at the opening of the March term he wrote a vigorous opinion holding that General Andrew Jackson's declaration of martial law was a usurpation and ineffective; that "the exercise of an authority vested by law in this court could not be suspended by any man." 3 Mart. (O. S.) 530-531. This opinion was rendered in a case in which Martin had been counsel and on the merits he recused himself. 3 Mart. (O. S.) 570.

The court as constituted by this appointment, Mathews, Derbigny, and Martin, deserves a passing personal notice.

Mathews has been described as short, rotund, placid, even-tempered, and genial, with a touch of humor or pleasantry in his intercourse with men and on the bench. His disposition crops out in his opinions, which, moreover, are fine specimens of taste and learning.

Derbigny was tall, with a slight, graceful figure, somewhat high-strung, nervous, self-centered, and ambitious. A certain idiosyncratic style marks all of his opinions, and it suffers in juxtaposition to Martin's clear, crisp English, as may be seen in his

concurring opinion in the Martial Law Case, 3 Mart. (O. S.) 530-531. It is clear to the end of his service that the author is constantly transferring French thought to English expression.

Martin was "rather below the medium height, with a large head, a Roman nose, and thick neck," stern, silent, serious, dogged, and laborious. There is never a gleam of humor or sentiment in his productions, but he often rises to the sublime. He was a noted phrase-maker—doubtless the result of his taste for the classics, already noticed. His epigrammatic sentences have a terse clear arrangement that recalls Bacon and the Bible. His views of life were as fixed as the North Star. He was devoted to labor, and he never allowed himself to be detached from an industry that amounted to genius.

For several years the court worked unbroken, engaged on some of the greatest questions that any American court up to that time had grappled with, laying foundations to which the ensuing years merely added a superstructure. In 1820 Derbigny was selected with Livingston and Moreau-Lislet to prepare the Civil Code, which is now called the Code of 1825. In the same year, on December 15, 1820, he resigned the judgeship to enter unsuccessfully a contest for the governorship. Derbigny ran as the candidate of the Creoles, while Robertson was supported by the American element. In 1828 he was more successful, but he had served as Governor only a year when, in 1829, he was thrown from his carriage, in a runaway just outside the village of Gretna, in Jefferson parish, and sustained a fracture of the skull which caused his death. To succeed him on the bench the Governor selected Alexander Porter, of Opelousas, who was appointed on January 2, 1821. This new judge was at 35 a leader in his profession, a scholar, and a publicist. He had held a strong position in the convention which framed the Constitution, and he brought to the bench a freshness and vigor, a depth of scholarship, and an industrious application that materially added to the prestige which the court enjoyed at that time among jurists and in the courts of the world. It is difficult to select from his varied store any one case to illustrate his genius, but the opinion in Saul v. His Creditors, 5 Mart. (N. S.) 569, 16 Am. Dec. 212, is generally recognized as a production equal to the legal classics of any age. It is true the case was argued by a galaxy of great lawyers—Grymes, Hennen, Mazereau, Rawle, Morse, Eustis, and Livermore—but the

ability, under such circumstances, to distinguish and to strike out and impress an enduring principle is no mean gift.

Porter left the bench in 1833, seduced by political aspirations, and he was serving as one of the Senators of Louisiana in the Congress of the United States when he died some years later.

With the passing of Porter the court may be said to have closed its Imperial or Augustan Age. The largest part of its great task had been completed. It remained only to keep the path straight and to profit by the experience of the past in applying the problems of the future.

Bullard, who took Porter's place, has written the contemporary view in a footnote to 6 Robinson, 413. "It was," he says, "a period remarkable in our judicial annals, in the course of which the law itself underwent great changes, by the amendments of the Civil Code and the enactment of the Code of Practice, and the final abrogation of the Spanish law, in 1828. These changes added much to the labors of the bench; and, while they ultimately simplified our jurisprudence, produced perplexing difficulties in the comparison of the old with the more recent enactments. The Code of Practice especially was a most perplexing innovation. The task imposed upon the court was performed with discrimination and ability. It was also during that period that the most important decisions were rendered on questions of the conflict of laws, and that branch of international jurisprudence was greatly illustrated by the labors of the Supreme Court of Louisiana."

To succeed Porter, the Governor on February 4, 1834, commissioned Henry A. Bullard, a native of Massachusetts. The new judge was a Harvard graduate, and at 46 had seen the world in many aspects. He had filibustered in Mexico, practiced law in Louisiana, served as a district judge in Natchitoches, sat in Congress, cultivated literature, written history; in fine, was a ripe product of the times. He served until February, 1839; resigned, and again returned to the court in 1840 remaining this time until the Constitution of 1845 legislated that bench out of office.

Mathews died in November, 1836, and with his death the court of 1812 entered upon its twilight. A series of rapid changes took place. Martin grew blind and decrepit as he aged. When he became Presiding Judge through Mathews' death in 1836, his sight was very bad, and ultimately was lost completely; but he remained on the bench, notwithstanding this serious handicap,

steadfastly holding on to a position which physically he was unfitted to fill.

He was now surrounded in quick succession by new men, who came and went without leaving much impression on their own time, and whose work of this period has been neglected or forgotten, or would be forgotten, had some of them not made later reputations which compels the historian to return to their earlier labors for comparison.

Mathews' place was filled April 1, 1837, by Henry Carleton, who is still remembered as coadjutor with Moreau-Lislet in the translation of the Partidas, which was accepted in 1820 by the Legislature on the recommendation of a committee appointed for the purpose of examining the translation. This committee was Derbigny, Mazereau, and Livingston, and the Legislature ordered the translation to be circulated as a substantial contribution toward an understanding of the laws of Spain.

Carleton resigned in February, 1839, and Bullard resigned at the same time, as already noted, leaving Martin alone on the bench.

At this period the court had accumulated a large docket, due principally to the litigation resulting from the current panic and financial depression. The illness of Mathews and Martin had some part in the congestion, but the methods of the court were also criticized. The judges heard arguments on three days in each week, sitting five hours per day. No check was placed on counsel, and the court took the same privilege. It was called a "talking court." There was, it is said, a continuous argument in which the judges often held the floor to the exclusion of counsel. There were times when not more than one case was heard in the entire three days. A critic of the period (Gustavus Schmidt, 1 La. Law Journal, 157) estimated that the docket then held 400 cases, and that the last one filed would probably be reached at the end of 14 years.

To meet the public reproach, two of the most active leaders of the bar were selected to fill the vacancies, and on March 4, 1839, the Governor appointed Pierre Adolph Rost and George Eustis. As their commissions bore the same date, the age rule of the Constitution was invoked to determine precedence. Thereupon, says the reporter (13 La. 87), "Judge Rost, being the senior, took his seat on the right and Judge Eustis on the left of the Presiding Judge."

These new judges belonged to the modern régime. Eustis was from Massachusetts, of distinguished family, well educated, and had served as attaché in one of our embassies in Europe. He enjoyed a large law practice here, and his acceptance was an undoubted financial sacrifice. Rost was of French birth, and had served with Napoleon near the close of the latter's reign. He had resided in Louisiana for many years. He was in all respects, socially and otherwise, in the Eustis category, and had, besides, cultivated the habit of an annual foreign vacation, and the families of both judges were absent in Europe at the time of their appointment. It did not take either judge long to reconsider his change in life. Contemporary gossip had it that aside from the lost professional emoluments and the freedom of life, which were sadly missed, the new judges found themselves hampered by the Presiding Judge in the effort to clear the docket. These personal peculiarities of the Presiding Judge apparently could not be overcome, and they added the last drop which overflowed the pail of regret. In May, 1839, Rost resigned, and Eustis followed in June.

The Governor found it not easy to replace these recalcitrants. Finally George Strawbridge accepted, and so did Alonzo Morphy, who were appointed in August, 1839. Strawbridge served one term in the Western District, and took the way of Rost and Eustis; but this was expected, for he declared when accepting that he intended to sit only through that term and for the purpose of assisting to clear the congested docket of his district. Morphy remained until the court of 1845 came in. By birth, training, and service Morphy was well fitted for the post. He was a South Carolinian, and had been a student in Livingston's office. He had served in the Legislature and as Attorney General. His opinions, however, are not light, or thought stirring reading, probably because the labor of expressing the views of the court was almost wholly thrown upon him. He is the author of more than three-fourths of the opinions reported during his incumbency.

Eustis was tendered the Strawbridge vacancy, but declined, and the Legislature in 1839 concluded to end the trouble by exercising the privilege granted by the Constitution to enlarge the court to five members. Bullard now accepted a reappointment, and Edward Simon and Rice Garland were added under the act just quoted. See 14 La. preface. The latter ceased to act after the September term, 1845.

The decisions of the court of 1812 appearing in the eighteen volumes, 3 to 12, Martin, Old Series, and 1 to 8 Martin, New Series, were reported by Martin himself and published at his own expense. Martin's decisions extend, however, through the entire series of fifty-one volumes of Reports, covering the period 1809-1846.

In the March term of 1830 Branch W. Miller became reporter to the court, under legislative authority, and his work appeared as the Louisiana Reports. He was succeeded in 6 Louisiana by Thomas Curry, who continued the publication under the same name until March, 1842, making nineteen volumes of that series. He wrote a valedictory which he published as a preface to his last volume (19 La.), and it may still be read with interest.

Under contract with the state, Merritt M. Robinson continued the Reports, but gave them his own name. He began his official career in 1842 by a suggestion to the court to be relieved of the expense of publishing certain of its decisions, and he clearly intimated that many of these were of no general or public interest, and most of them were, in any event, too long, for all of which he was promptly and emphatically snubbed by the court. He has embalmed the incident in a preface to 1 Robinson, and had his revenge in twelve portly volumes, covering not quite four years of the court; but it is an open question who had the best of the argument, for the point is still under discussion all over the Anglo-Saxon world, and we have not yet heard the last word.

On Wednesday, March 18, 1846, the court of 1812 met for the last time, with only Morphy and Simon present, and they adjourned to Thursday, March 19th. On that day the court, organized under the Constitution of 1845, began its sessions.

The old régime had lasted thirty-three years, but no one regretted its end. Its greatest mind was still in service, but his lamp was flickering, and he too passed away at the end of the same year.

We have noted Martin's first opinion. It is well to refer to the last one. It is brief and very much after the old Martin manner. In Bridge v. Oakley, 12 Rob. 638, the Presiding Judge ruled that an exception of no cause of action would not lie in an action for damages by a voter against an inspector of elections for maliciously preventing the voter from voting at an election; that the malicious deprivation of the ballot was an injury compensable at law.

IV. 1846-1853.

For years before the close of the period just described political parties in Louisiana had been seriously divided on the question of suffrage, popular control, and rotation in office. The old system was topheavy, and many abuses were laid to its door, particularly in so far as the judiciary was concerned. Finally a convention was called to frame a new Constitution, but the factions were so evenly divided the result was a compromise which pleased few, and indeed strengthened the objectors for a new struggle which, it was recognized, would speedily ensue.

The Constitution of 1845 framed by this body provided for a Supreme Court to be composed of a Chief Justice and three Associates, to be appointed by the Governor for a term of eight years, the first judges to go out at intervals of two years, the Chief Justice last, and their successors to be appointed for the full term. The salary was $6,000 for the Chief Justice and $5,500 for the Associates. Being a court of four, it was provided that the judgment below should be affirmed when the court was divided in opinion.

Sessions were fixed in New Orleans from the first Monday of November to the end of June, and elsewhere as should be determined by the Legislature. Under statutory provisions, the sessions after 1846 were held in Opelousas in August, Alexandria in September, and Monroe in October, giving the judges but one month of holiday.

The appellate civil jurisdiction over $300 in amount, and other provisions of the previous Constitution were re-enacted. Appellate jurisdiction in criminal cases and on the law only was conferred for the first time, limited to cases where the punishment of death or hard labor was inflicted; also in all cases involving the constitutionality or legality of any tax, toll, or impost, and over fines, forfeitures, and penalties imposed by municipal corporations.

This court organized on Thursday, March 19, 1846, in the room which had been occupied for some time by its predecessor. Years afterward the same room was occupied by the Third District Court for the Parish of Orleans, in which Justice Monroe held his first judgeship.

No ceremony marked the advent of the new judges, who conformed to the simple practice of the first court. Their commis-

sions were signed by Isaac Johnson, Governor, and countersigned by Charles Gayarre, Secretary of State. These were spread on the minutes, and the day's session was concluded.

These judges were George Eustis, Chief Justice; Pierre Adolphe Rost, George Rogers King, and Thomas Slidell, Associates. The Chief Justice and the Senior Associate Rost had served, as heretofore noted, for a brief period under Martin in 1839, but Eustis here attained the distinction of First Chief Justice of Louisiana.

King retired in December, 1849, or, at least, he did not serve after that date. He was succeeded by Isaac T. Preston, appointed by Governor Joseph Walker, who was seated March 4, 1850. Judge Preston perished in a steamboat fire on Lake Pontchartrain on July 5, 1852, and William Dunbar was appointed to fill the unexpired term. He sat for the first time at Alexandria in the September term of 1852. The latter is chiefly remembered as the subject of an excoriating pamphlet by Charles Gayarre in a later campaign in which they were opposing candidates for Congress, but which did not elect its author.

King had served as District Judge on the Court of Criminal Errors and Appeals, and was considered an excellent criminal lawyer. State v. Brette, 6 La. Ann. 661. He retired from the Supreme Court in 1849 because he felt unequal to the labor. He was fragile and ill, but he survived all of his Associates, dying only in 1871.

Preston had been an active partisan for years in Jefferson parish, and was a member of the Convention of 1845.

Eustis has heretofore received a passing notice regarding his service in 1839, but his position in our legal history justifies the insertion here of a sketch (which is also intrinsically worthy of repetition) from the pen of one who occupied the same seat only a few years later. Eustis died in 1859, and Chief Justice Merrick, addressing the bar of the court, said:

"The attainments of Judge Eustis as a jurist were what might have been expected from his fine mind, great industry, and studious habits.

"Through the many years of his professional life he was constantly adding to his great stores of learning, and sounding the fountains and sources of our law. To him the profession was not merely an art, valuable because it produced gold and silver; it was rather a field of ethical philosophy, which rewarded each

search with new discoveries, and furnished those pleasures to a cultivated mind which science daily bestows upon her votaries.

"In his intercourse with this court as an advocate his manner was peculiar. He seemed (in those important and difficult cases which were principally confided to him), to discard all declamation and elaborate deductions from particular texts, and merely suggesting the sources of the law to be examined, to give himself up to the search of the legal principle which was to control the case, as one whose main object was to aid the court in its pursuit of the truth, and who had no further interest in the result than a desire that the right conclusion should be attained."

The court held its last—a purely formal—session in New Orleans on Monday, May 2, 1853, with Rost, Slidell, and Dunbar present, and adjourned sine die.

The court of 1846 had come into office under a cry for reform in the long opinions and costly delays of the late system. In response, rules and methods were adopted by the court in which everything was subordinated to this end. One rule deserves remembrance. When rehearings were granted the case was resubmitted at once; the party against whom it was allowed was required to file within three days thereafter a printed argument on the points on which the rehearing was given, and the other party to reply thereto within the three succeeding days.

On the question of lengthy opinions the court almost sacrificed clearness to brevity, for, while many important and far-reaching opinions were rendered, the hallmark is upon all of them.

It was a court of strong, bright, active men, and the bulk of its work was enormous. It caught up with a congested docket—it would seem to have been impossible to satisfy a cry for reform more completely than in this instance—but the spirit of the young democracy was not to be appeased, and before the commission of the Chief Justice expired a new Constitution swept another bench into power.

Merrick said of this court, on the occasion above mentioned:

"On the change under the Constitution in 1846—in the formation of which he aided—Judge Eustis accepted the office of Chief Justice of this court, which he held until the Constitution of 1852 was carried into effect in 1853. The decisions of this period are contained in the first eight volumes of the Annual Reports. These volumes evince the greatest capacity for the transaction of business, and the most untiring industry on the part of the mem-

bers of that court. To judge of these labors we must compare them with the earlier years of our jurisprudence.

"At the time the Supreme Court was organized, and many years afterwards, from forty to ninety cases were all it was called upon to decide during its session in this city. At the period to which I refer, its business had increased to between four and five hundred cases. What learning was, therefore, required of a court composed of only four judges to meet the exigencies of the public business, may be imagined when it is considered the judges were without any sufficient leisure for the investigation of authorities, except those cited, and were compelled to rely in a great measure on their previous reading, or see the business of the court increase until it should overwhelm them with its hopeless accumulation. It is a sufficient praise to Judge Eustis to say that he, with the assistance of his able colleagues, was equal to the occasion." 13 A. viii.

The reported opinions of the court of 1845-1853 were published by M. M. Robinson, reporter of the previous court. A new series was begun, called the Louisiana Annual Reports, a title which remained unchanged for fifty-two years. So far as now known, the reporter had discretion regarding the printing of the decisions. In any event, there is published in 1st Annual the first known list of unreported cases. Robinson soon gave way to W. W. King, and he, in turn, was succeeded by W. M. Randolph as reporter, before the labors of this court ceased.

Randolph was a lawyer of the younger set who had before him a long and honorable life and who reached high position at the bar. He was selected by the court for the reason that the court had been chosen, to clear up a congested situation. The preceding reporter was fifteen months in arrears on his printed work, and in June, 1853, was publishing the opinions rendered in March of the preceding year. In 1854 the new reporter delivered volume 7, covering the year 1852, and promised the Reports of 1853 within thirty days and the decisions of the first quarter of 1854 by August of that year. With this prelude the reporter opens a preface to volume 7, and adds:

"The reporter hopes that the large amount of work will be a sufficient apology for the apparent delay in publication. Few persons not familiar with the drudgery of proof-reading can form a distinct idea of its annoyances. There can be no doubt that

whatever gifts 'come by nature,' correcting proof is not one of the number."

We learn from this preface that the labor of making the syllabus fell on the reporter, and in using the early Annuals it is well to remember this. He says:

"In all cases, whenever practicable, in making the abstracts of points decided, the language of the court has been adopted. In a very large number of cases the facts are stated to which the law has been applied, no attempt being made to generalize a principle from the decision, when the court has not announced such a generalization. This had greatly increased the labor; but it has, he trusts, secured accuracy."

V. 1853-1864.

The Constitution of 1852 was the product of the new democracy, and it reflected the spirit of the times.

This instrument created a Supreme Court of one Chief Justice and four Associate Justices, elected by the people at times different from other elections, for a term of ten years; the first appointees to go out at intervals of two years, and the Chief Justice going last and serving the first full term. The salary remained at $6,000 for the Chief Justice and $5,500 for the Associates. The state was divided into four Supreme Court Districts, with the Chief Justice elected from the state at large. This was the first time this physical division had been made; theretofore, however, there was an unwritten rule to the same effect, which had not always been observed. Vacancies were to be filled by the Executive, unless more than one year of the term remained, in which case the office was sent to an election.

The jurisdiction remained practically as in the Constitution of 1845, save that the Legislature was given the power to restrict it "in civil cases to questions of law only," a power which was never exercised.

Wherever, by reason of recusation, a majority did not concur in the opinion, the court was authorized to call in any judge of an inferior court to sit in the place of the recused justice. This was also a new provision which had not appeared in the previous constitutions.

The place and time of the sessions at New Orleans remained as before—the first Monday of November to the end of June, and elsewhere as should be directed by the Legislature.

On Monday, May 4, 1853, the Supreme Court elected by the people under the Constitution of 1852 organized in New Orleans with Thomas Slidell, Chief Justice, and Cornelius Voorhies, A. M. Buchanan, and A. N. Ogden, Associate Justices. James G. Campbell, the fifth justice, joined on the 16th of the same month.

The rule or ceremony of installation did not vary from the precedents already quoted. Their commissions were signed by P. O. Hebert, Governor.

Slidell, as we have seen, came over from the preceding court, advancing, however, to the principal seat and becoming the second Chief Justice of the state. The court was strong as a whole and compared favorably with its immediate predecessor. Its decisions are as a rule brief, and it is evident, without resorting to tradition, that lawyers and court worked earnestly and rapidly.

The courts of other years had apparently placed no time limit on arguments, and your honors and the brethren of today may feel some interest in the new rule of 1853 on that subject. It raised a chorus of dissent. The legal horizon grew black with prophecy of evil to result therefrom, and yet that rule was mere childs-play compared with the one under which we work.

"In consequence," says the court, "of the great number of cases upon the docket, the following rule is adopted, to wit: It is ordered that not more than one hour will be allowed for an opening argument, one hour to each counsel for the defense (not exceeding two), and one hour for the closing arguments, except where in special cases the court on previous application may otherwise order."

It is said that a good, uninterrupted four hours' argument will enable any Supreme Court to cut down its opinions one-half, if, indeed, it does not leave the court without the ability to say anything whatever. Your honors may not have heard this before, and the information is respectfully submitted.

The court of 1853 lived only nine years, excluding the War period, but it created a record in Louisiana for rotation in office.

Campbell resigned in June, 1854, and H. M. Spofford was elected to succeed him, taking his seat on November 6, 1854.

Slidell was assaulted by a ruffian at the polls in June, 1855, and his injuries were such that he was compelled to retire. He dragged out a life of mental disability until his death, in 1861. He was a Democrat of pronounced type, one of the wheel horses of

his party, and a leader of the movement for an elective judiciary. It seemed the irony of politics that his splendid career should have been summarily closed by an irresponsible wretch, whose right to be at that spot had perhaps been guaranteed to him through the efforts of his victim.

Slidell was succeeded by Edwin Thomas Merrick, after a fierce campaign, which it is said has never been paralleled in the history of the state until very recent times. The third Chief Justice had been a district judge in the Feliciana district, and he came to his seat with an established reputation as a jurist. He entered on his duties at Monroe on August 1, 1855.

In June, 1855, Ogden resigned, and his unexpired term was filled by the election of Lea, who sat for the first time on Monday, July 23, 1855.

Lea's term expired in April, 1857, and his place was taken by J. L. Cole on May 4, 1857.

In September, 1858, Spofford resigned, and Thomas T. Land was elected and began to serve on November 1, 1858.

Cornelius Voorhies retired in April, 1859, and was succeeded by Albert Voorhies, his son, on May 3, 1859.

In January, 1860, J. L. Cole withdrew, and Albert Duffel was elected in his place, and took the bench on March 12, 1860.

On Monday, February 24, 1862, the Supreme Court met in New Orleans, with Merrick, Buchanan, Voorhies, and Duffel present, and Land absent. Some minor business was passed on, and an order was entered reciting that at a meeting of the Judges of the Supreme Court and the district judges of Orleans parish, it had been agreed that all courts should adjourn to facilitate the mobilization of the militia, which had been ordered by the Legislature. Accordingly the court adjourned to Monday, May 5, 1862, at 11 o'clock.

On that day, all the judges being absent, the clerk adjourned the court to Tuesday, May 6, 1862, and the same conditions still existing, he on that date adjourned it sine die.

In the gathering of February 24th Buchanan was the last representative of the group which organized the court nine years before. In that short period twelve judges had seen service on the bench, but notwithstanding this constant shifting of minds, the body of its jurisprudence ranks high. We might, indeed, paraphrase here Merrick's eulogy on the preceding court, adding to it

that Spofford had all the ability of Eustis and was more than his equal in industry, and that the Chief Justice himself took pride in keeping ahead of his Associates in the volume of his product, and found time besides to write concurring and dissenting opinions, which established his reputation as an independent thinker. Indeed, these volumes and others like them make us regret that the Constitution of Louisiana now prohibits the publication of concurring and dissenting opinions; for, with this limitation on the judicial mind, there seems to have fallen on the court a habit of concurrence which has, it is thought, helped to create the impression of a one-man court, concerning which so much has been said in recent days.

Aside from the learning and industry of the judges, the court had a peculiar advantage over its predecessors in that nearly always there were at least three men sitting together who had seen long service on the district bench, and who had there attracted the deserved appreciation of the bar. The judges were not only zealous workers, but there was between them a jealousy and rivalry in work which urged each to his topmost speed. There is a curious contemporary illustration of this in a copy of Eleventh Annual in my possession. It contains the autograph of Justice A. M. Buchanan, and was evidently used by him while on the bench. On the flyleaf is this entry in his handwriting:

"This volume contains 409 decisions, of which pronounced by

M.	104
V.	55
B.	76
S.	104
L.	70
	409

"Opelousas cases omitted in this volume altogether, although 43 cases were decided there, of which

M.	15
B.	14
L.	14
	43

"Justices Voorhies and Spofford absent from Opelousas."

Up to the closing hour in New Orleans the court seems from its minutes to have been undisturbed by the clamor and disturbance of the great war which was raging without its portals. The last reported cases, decided in February, 1862, show no sign of haste or tremor. Indeed, it was only when the city was literally in the embrace of the foeman, and the local authority was toppling to its dissolution, that the session was brought to an end.

The opinions of the court of 1852 begin at page 277 of the 8 Annual, reported by W. M. Randolph, who was succeeded in 12 An. by A. N. Ogden, who served until 1862, but the opinions of 1861-62 were compiled after the War closed, and were published by S. F. Glenn, with the assistance of the late reporter. It ought also to be added that by an act passed in 1855 the reporter was directed to report all cases save those involving mere questions of fact, or in which damages were assessed for frivolous appeal.

The city of New Orleans was taken by the Federal Army in April, 1862. Baton Rouge, the capital, fell shortly thereafter, and the seat of the state government was removed to Shreveport, and the Supreme Court was by legislative act required to hold sessions there or elsewhere during the War. Act 23 of 1863. Merrick and Land remained on duty at Shreveport, but were not joined by Buchanan, Duffel, and Voorhies. Buchanan seems to have remained in New Orleans, and to have drawn his salary from the Auditor of the Hahn Government. See Report, Journal of Convention of 1864, p. 134.

Thomas Courtland Manning was appointed by Governor Moore to fill Buchanan's place, and served until the close of the War.

Duffel died, and on February 10, 1864, the Confederate Legislature authorized the Governor to appoint a successor to serve until an election could be held in Duffel's (Second) Judicial District. P. E. Bonford was appointed under this act. See Merrick's Address on Land, 45 An. vii.

There is no printed record of any judicial work performed, but in the same address it is said the court heard and decided several important cases of public interest, besides acting in an advisory capacity to the Governor and the Legislature.

During the first four months of federal military occupation, that is, from April to August, 1862, none of the established courts had been opened in New Orleans. The army created a provost

court presided over by Major Joseph M. Bell of Butler's staff. All the criminal offenders were tried here, and the provost judge was, besides, invested with a civil jurisdiction, which extended into every justiceable controversy, including the settling of estates and the granting of divorces. See Mechanics' Bank v. Union Bank, 89 U. S. (22 Wall.) 297, 22 L. Ed. 871.

In the summer of 1862 General Shepley was appointed military Governor, and one of his first acts was an order issued in August, 1862, to reopen for business the Second, Fourth, and Sixth District Courts for the Parish of Orleans. He appointed judges to these courts, retaining Rufus K. Howell in the Sixth, in which he was judge at the opening of hostilities.

On October 20, 1862, President Lincoln by executive order established the Provisional Court of Louisiana, and appointed Charles A. Peabody, of New York, to be judge thereof. Peabody arrived from New York in December, 1862., bringing with him his clerk, marshal, and prosecuting attorney, all Northern men, and the court was immediately put in operation. In the executive order the President granted to the Judge of the Provisional Court all the power, jurisdiction, and authority previously vested in the district and circuit courts of the United States or in the state courts of Louisiana, and, furthermore, made its judgments final and conclusive. This extraordinary order was purely a war measure, and it was supported by the arms of the United States until the fall of 1864; that is, until the federal courts had resumed sessions, and the Republican state Constitution of 1864 had been put into operation.

The court was abolished by Congress July 28, 1866. The regularity of the Provisional Court was maintained by the Supreme Court of the United States in The Grapeshot, 76 U. S. (9 Wall.) 133, 19 L. Ed. 651.

In the interim the Provisional Court sustained the authority granted to it, and became in consequence a tribunal of great temporary importance. The judge seems to have exercised not only original jurisdiction, but he assumed the power of a court of review over the state courts. In the minutes of the Provisional Court, under date of January 12, 1863, the judge entered a rule of procedure to regulate transfers of cases to his court "from the late Supreme Court."

This digression would be unwarranted, save that it leads up to a matter which had long been treated as a legend, but which seems on examination to have had some foundation.

After the re-establishment of the three district courts in Orleans and similar courts in Jefferson, and other parishes within federal control, the right of appeal from their decisions to the Supreme Court of the state was claimed and recognized. This created a situation unprovided for in Shepley's original order, and to meet it the military Governor appointed a quorum of judges for the Supreme Court. In April, 1863, he named Charles A. Peabody Chief Justice, and John S. Whitaker and J. L. Cole Associates. Peabody was the judge of the Provisional Court; Whitaker was then sitting under appointment as judge of the Second District Court; and Cole had been on the Supreme Court and resigned in 1860, as we have previously noted.

That these persons ever acted together is improbable. The Minute Book of the Supreme Court shows no entry after the adjournment on May 5, 1862, until the entry covering the organization of the court of 1865. But Peabody had actually exercised in his court the appellate jurisdiction of the Supreme Court, and he took over the added honor very lightly. An extra commission or so was a little thing to this judicial autocrat in those piping days. He drew salary as Chief Justice to the extent of $3,541.66 on his own warrant against the Auditor of the Hahn State Government, elected under military authority in February, 1864. See Report Journal of Convention 1864, under date June 25, p. 134.

The time at my command has not sufficed to trace or authenticate the records, if such exist elsewhere. In 4 American Law Register, for 1864-65, a contemporary Philadelphia publication, three essays appeared on the Provisional Judiciary of Louisiana, in which the facts are given substantially as above detailed. These essays were published in the numbers for December, 1864, p. 65; March, 1865, p. 287; and May, 1865, p. 385. The writer speaks as with full knowledge, and was evidently on the scene.

From internal evidence, together with the initial "B" signed to the article in the March number, and the place of composition, New Haven, Conn., I am satisfied the writer was Edward C. Billings, who was later the law partner in New Orleans of August De B. Hughes, clerk in 1862-63 of the Provisional Court of Louisiana. Billings came to New Orleans at or just after the federal occupa-

tion, and he practiced law here until his appointment as Judge of the District Court of the United States for this district. His actual residence, however, was in New Haven, Conn., and he died there while an incumbent of this office.

During the whole period 1862-64 the Supreme Court room was occupied by the United States military forces. If any session of the Supreme Court was held by Peabody, it was in his own room in the Custom House, but his minutes do not disclose the fact. In a slight sketch of the United States Provisional Court written by Judge Peabody and published in the International Review May-June, 1878, he intimates that he exercised the functions of both offices at the same time. Having the federal army at his back and there being no appeal from his decisions he must be ranked as a more powerful magistrate than the first judge of the territory whose career has been covered in the first paragraphs of this essay.

In the preface to 16 Annual, written by S. F. Glenn and published in 1865, the reporter says that the records and opinions of the court had been so scattered and misused by the military occupants of the court that it was difficult to make up a complete report of the court's work of 1861-62. The fact that Glenn, who was a contemporary, makes no mention of the Peabody court is at least slight evidence that he found no written opinions. Another circumstance throwing doubt on the question is that Act 51 of the General Assembly 1865, approved April 3, 1865, makes provision for the transfer of the records of the Provisional Court of Louisiana into the several district courts of the state. No mention is therein made of any records to be transferred to the Supreme Court; nor has there ever been any further legislation on that subject. The records were never, however, transferred and are still in the custody of the United States Court for the Eastern District of Louisiana.

Reviewing the whole matter, the conclusion is that the three persons named were actually appointed; that the appointees do not appear to have held court together; that Peabody apparently exercised the functions of the Supreme Court at the same time he was sitting as United States Provisional Judge, and that he drew salary from the state as Chief Justice, at least, until the meeting of the Constitutional Convention in June, 1864.

VI. 1864-1868.

It was the policy of President Lincoln in 1862-64 to organize a civil government in Louisiana, and under his suggestion an election was ordered by General N. P. Banks, to be held on February 22, 1864, to elect a Governor and other state officers, to be installed on March 4, 1864; and he also called an election to be held March 28, 1864, for delegates to a convention to revise the Constitution of 1852. Both elections were held in due course in New Orleans and other places under federal control. Michael Hahn was elected Governor and J. Madison Wells Lieutenant Governor, and they were inaugurated on March 4, 1864. At this time the larger part of the state was still in control of the Confederate forces.

The Convention met April 6, 1864. It was composed of political waifs and estrays from nineteen parishes, but, of course, some men of character and ability were found in the gathering. The debates of this convention were preserved and printed, and they constitute a political opera bouffe or side show to the awful tragedy of life in Louisiana in 1864.

After much travail a Constitution was framed which was submitted in due course to the same limited electorate on September 1, 1864, and on September 5, 1864, a general assembly was elected to complete the government. Hahn was elected Senator in 1865 after two other Senators of the same creation had been refused admission by the Senate of the United States, and upon this election Hahn resigned and Wells succeeded to the Governor's chair. Each of these men had been Democrats in the old days, but they were now classified as "loyal men," and they had been nominated as free state men, i. e., men who desired to bring Louisiana back into the Union under Republican auspices.

The Constitution of 1864 created a Supreme Court of five justices appointed by the Governor for eight years with a salary of $7,500 to the Chief Justice, and $7,000 to the Associates. In other respects, including jurisdiction, the rules established in the Constitution of 1852 were re-established, save that no territorial qualification was required.

The court was organized by Act No. 11, p. 18, of 1864, re-enacted in Act 82 of 1866, p. 150, by which the state was divided into four appellate districts, with one Associate Judge from each district; the Chief Justice to be appointed from the state at large.

Sessions were fixed at New Orleans, Monroe, Natchitoches, and Opelousas; the first from November to June, the others in July, August, and September, respectively.

Appeals concerning the right to office were made returnable in ten days, and in criminal cases at the next session, wherever held. It was also provided that no appeal should be dismissed for informality, without opportunity to the other party to remedy the same.

No attempt was made to name the judges until April 3, 1865, on which day Governor Wells appointed William B. Hyman, of Rapides, Chief Justice; and the Commissions of Zenon Labauve, of West Baton Rouge, Rufus K. Howell, John H. Ilsey, and Robert B. Jones, of Orleans, Associate Justices, bear the signature of Governor Hahn. The judges met on May 1, 1865. Their commissions were spread on the minute book of the court of 1853, which was thereupon closed forever.

The court thus constituted was, from a professional viewpoint, distinctly mediocre, but, considering the situation, the appointments might have been worse.

The court, as well as the government from which it sprang, was a mere puppet to register the views of the federal authorities, political and military. Neither department of that government could say it had either a soul or a will of its own, and, this being the case in the territorial region where it was created, it goes without saying that it was absolutely disregarded in the remainder of the state, where the authorities elected in 1861 and again in 1864 were recognized as the only true government of Louisiana. But the end of the old era was already in sight, and the close of the civil strife settled the new judges in state-wide authority and determined their right to a place in the history of this court.

Under the conditions surrounding their appointment, the judges had to be in sympathy with the winning side, and this particular group was "loyal" and "safe." Hyman had practiced law for years in Rapides. Labauve had accumulated some means as a sugar planter and lawyer in the old "German Coast" region. Ilsley had practiced in Jefferson and adjoining parishes. Howell had been a judge before and during the War in Orleans; and Jones was an unknown quantity. The Chief Justice was an amiable, easy-going, rather indolent man, full of whimsies and odd ideas. His life had been devoted by choice to the unpopular and under-

dog side. This was not a pose but a quality of disposition. His transition to the Republican party was to be expected, and he held to that idea until he died, years afterwards. Aside from these characteristics, no one ever questioned his integrity or his desire to be just. If he failed, the times and his associations and surroundings were more to blame than he. The last remark may also be applied to Labauve and Ilsley. As to Howell, the people generally felt otherwise, probably because he was a bitter partisan, and he seemed, when going over, to have turned his back absolutely upon his past. Jones was a nondescript, regarding whose ability as a judge there was a contemporary jeu d'ésprit which Ficklen has preserved in his History of Reconstruction in Louisiana, a work of rare promise, which, unfortunately, the author did not live to complete. He says that Jones applied to a justice of the peace to qualify, i. e., to be sworn in, and the latter replied: "I will swear you in, but all hell could not qualify you." The story is probably apocryphal. I heard it first from Sam Myers, an irresponsible wag who eked out a precarious existence for years at this bar, and who will long be remembered for a witty and almost libelous poem on Steele, Attorney General of a later era, in reply to the suit by the latter for the license tax then levied on and still exacted from the profession. Jones' reported work is scant. He resigned in 1866 and shortly afterward died. In his place there came to the bench in July, 1866, one of the most unique characters of that time, James G. Taliaferro, of Catahoula, who was born in Virginia in 1798. He had first resided in Mississippi and thence moved to Catahoula, La., where for a time he did manual labor on a farm. He was elected parish judge in 1840, apparently without having been licensed as a lawyer; at least, without having practiced. Thereafter he resigned this position and followed the law for a livelihood. He was a member of the Constitutional Convention of 1852, and of the Secession Convention of 1861. He was one of the few members of that body who vigorously opposed secession, and he declined to sign the ordinance. He was a rugged, straightforward, old man who had convictions which he did not hide, and which he was not chary of expressing. His attitude at this time was in accord with his beliefs. He held the respect of his opponents in a period when the same could be said of few others in his situation. He added strength to the court of 1865, and was returned with Howell to the court of 1868. He

died while on that bench in 1876, before the triumph of the cause which during all his judicial life he ardently and insistently joined in delaying and defeating.

The labors of the court of 1865-1868 are reported in 17 to 20 Annuals, inclusive. The first volume is chiefly left-over cases from the former court. The reporter was S. F. Glenn, who held the position until the close of volume 18, and was succeeded in 1867 by Jacob Hawkins, who continued the Reports through this court and until 1872 in the court of 1868.

The court rules of 1853 continued to govern, including the four-hour argument.

After 1866, that is, in 18, 19, and 20 Annuals, the business of the court grew somewhat in importance, and many serious cases were adjudicated, but, after all is said, it remains true that this period of our judicial history presents a flat, uninteresting surface. The judges were merely filling a gap. Out of doors chaos was slowly settling into order; the air was troubled and the sea of politics boiled; great and fundamental changes were taking place, but life on this particular judicial side moved on unperturbed.

The military forces arbitrarily and without hypocrisy settled all political and all public judicial questions. The judges were allowed to piddle with humdrum litigation, but, even so, care was taken to keep step with the military band. The forcible invitation to get out was often issued to their confrères in the pseudo state and city governments, for the favor of the master was in those days as uncertain as the verdict in a Roman circus, but the patient, obedient, and careful judges of the Supreme Court of 1865 were not disturbed. They wore the livery of power three and one-half years—filling the round of duty, writing commonplace opinions, and marking time against the inevitable change which all the portents foreboded.

VII. 1868-1877.

The Constitutional Convention of 1868 was preceded by the congressional reconstruction legislation of 1866-67, and there had been much blood shed and turmoil engendered as a result of that legislation. The members of the Convention had been elected by default—that is, the Democrats generally abstained from voting, or were unable to vote—and when the body met its ninety-eight

members were equally divided between blacks and whites, and all but two were Republicans.

The Constitution was ratified at an election guarded by federal troops, wherein Warmoth was declared Governor over Judge Taliaferro, who was of the same party faith, but had received some Democratic support. Warmoth's large majority was chiefly made up of negro votes. He had been posing as the Moses who would lead them out of the Wilderness. The United States in due course recognized the return of the state to the Union, and military rule ceased in Louisiana, save that at all times and until 1877 the army was used to maintain the Republican Party in its control of the government of the state.

The Constitution created a Supreme Court of a Chief Justice and four Justices modeled on the system established in 1864, save that the minimum jurisdiction was raised to $500. The salary remained at the previous figures, $7,500 and $7,000, respectively, and the appointment was vested in the Governor. The New Orleans session was shortened to close May 31st, and sessions elsewhere were to be as before and until otherwise provided by the Legislature.

The Legislature of 1868-69 treated the judiciary features of the Constitution as self-acting, and made no provisions, save to transfer the records of the preceding courts to this new creation. Acts 1868, No. 20, p. 20.

Warmoth appointed the Justices, and the court organized on the first Monday in November, 1868, in New Orleans, at the Cabildo, which was used for this purpose for the first time. John T. Ludeling, of Ouachita, was Chief Justice; James G. Taliaferro, of Catahoula, W. G. Wyly, of Carroll, R. K. Howell, of Orleans, and William Wirt Howe, of New Orleans, Associates. All save Howe were antebellum residents of the state, and more or less well-known personages. Howe had been a federal soldier, reaching New Orleans at or just after the capture in 1862, and while in the army he had been assigned to various tasks which brought him into not unfavorable contact with the people.

The other judges had already shown their devotion to the new régime, but they were given no credit for honesty or good faith in their convictions, save by those who were profiting under the new conditions or had risen out of the same. The rank and file of the white race mistrusted the judges from the start, and

there was much in the subsequent course of events to strengthen this first impression.

The court of 1865-68 had been a mere political plaything. It was harmless for evil, and, on the contrary, had served a very useful purpose; but the court of 1868-77 was quite a different institution. The restoration of the state to the Union meant the administration of all its powers and revenues by the new régime. The part to be played by the highest court was under such circumstances a thing to be considered, but no one dreamed then how powerful and useful it was to become.

The story of the eight years of misrule in Louisiana from 1868 to 1876 has never been fully told. It is known in its black outlines, and even in that shape history affords few parallels for the spoliation and demoralization of that time. The Supreme Court was a part of the governmental and party system under whose auspices and by whose members this gross wrong was perpetrated, and contemporary criticism did not separate or spare any department.

The political rulers of that period were a litigious set. Indeed, the courts had never been called to decide so many controversies of a public or quasi public nature. The Supreme Court was the battlefield where offices and emoluments were lost and won, and these political quarrels were not always aired and adjudicated without leaving scars upon the judicial body. A political history of Louisiana could, indeed, be written from the Annuals of that period, though all other records were destroyed; but such history would not be impartial, did it not establish the Supreme Court as one of the chief instruments in the overwhelming and subjugation of Louisiana by the Republican party.

Occasionally the current of political misrule would be stemmed for a time, and the court had periods of like effort. Howe particularly was restive during much of his term, and it is said his resignation in 1872 marked his final rebellion against the political methods of the day.

It is historically indisputable that the eight years of the Ludeling court left a bad taste in the mouth of the white people of the state. The underlying reason was, of course, found in the fact that the great mass of the white population and the bulk of the property of the state were unrepresented in the Republican Party. The government of the time was by these unrepresented

masses considered to be venal and corrupt. It was regarded as a revolutionary creation established by the power of the national government, which was always ready to sustain it, and did, in fact, maintain it by show of force whenever the reviving Democracy seemed able to shake it off. As a corollary it was believed that a judiciary sustained under such conditions could not be better than its authors, and consequently it could not and did not command the respect and affection which has always been felt for the Supreme Court more happily constituted.

It was charged and believed that the judges were ardent partisans, active in counsel and advice, and influenced by the leaders in all cases having a political aspect. It was the general opinion that no argument would convince the court in any case where the result would be injurious to the interests of the Republican Party, or would tend to advance the prospects of their opponents. It was also believed that this intense partisan bias affected the decision of every case where counsel, parties, or witnesses happened to be of opposing political families.

A tribunal thus always under suspicion, where one particular class of litigation was concerned, was, of course, on the defensive in all matters; but there is no evidence to sustain any charge against the fair conduct of the general business of the court.

The judges were a strong, forceful body of thinkers. Indeed, their undoubted ability and capacity was the bulwark of the wicked government under which they served.

The Annuals from 1868-72 cover a great course of jurisprudence—not even at the beginning of that century were the questions at issue so intricate or the matters at stake so important. This court was engaged, as had been the case with the first court, in rebuilding a government. It was called on to interpret and to enforce legislation which was intended to reverse the ancient and create a new order of things.

A study of their decisions helps us to understand other dark eras in the history of our race. These judges were contemporaries of the men they now rode with whip and spur; they had ripened under the same influences, yet they were vindictive, unyielding partisans who abated not one jolt or tittle in favor of their ancient fellowship. So far as in them lay they established black supremacy, and drove the last nail into white authority. They wrote a jurisprudence which on racial and public questions was

specious and unsound, and it was torn to pieces by the succeeding court, and by subsequent legislation; indeed, the whole hope of life in this part of the world ran contrary to the ruling dogmas of that frightful time, supported by the ability and authority of this high tribunal.

But when we have brought this black indictment, it is our duty to say that in other aspects, on general questions of jurisprudence, this bench was the equal of any. No student of the law can deny the learning and the strength and ability of the reasoning by which many great questions were then settled—decisions which have been re-examined and maintained by all succeeding courts.

The opinions of this period are published in 20-28 Annuals, inclusive, with Jacob Hawkins as Reporter until 1873—a grim, stark, hard partisan of the ruling faith, who ultimately resigned to take the judgeship of the Superior District Court of Orleans. This was a legislative monstrosity created in a wild revel of power to rid the dominant faction of a Democratic judge recently elected to fill the Eighth District Court of the same parish. A New Orleans newspaper embalmed court and judge in a fierce and stinging epigram, which will be found reported in the libel suit which ensued. Hawkins v. Publishing Co., 29 La. Ann. 134.

To succeed Hawkins as Reporter, the Supreme Court appointed Charles Gayarre, a gentleman and a scholar of the old régime, reduced in fortune and passing in retirement the evening of a long and brilliant life. It was a graceful and an unexpected act—a gleam of light in a dark period, which may excuse this digression. Mr. Gayarre remained until that bench was extinguished in the overthrow of 1877.

The court as originally constituted remained unbroken until November, 1872, when Howe resigned. The political alignments of the day, strange to tell, had brought Warmoth into touch with the Democratic Party and had divided him from the regular faction of his own party. Guided by his new Associates, Warmoth appointed John H. Kennard to succeed Howe, on December 3, 1872, and Mr. Kennard assumed his duties on the same day, and served until February, 1873, when he was unseated, as we shall now relate.

When Warmoth broke from his quondam associates they resorted to one of the familiar tricks of the time. He was impeached, and while this was pending Pinchback, the Lieutenant Gov-

ernor of Louisiana, appointed Philip Hickey Morgan successor to Howe. The State Senate did not confirm Kennard, but did confirm Morgan on January 4, 1873, and proceedings were promptly instituted before the Superior District Court to try title to the seat. The suit was brought in the name of the state, on the relation of A. P. Field, Attorney General, and was tried summarily. It was decided below in Morgan's favor, and this judgment was affirmed in the Supreme Court on January 30, 1873 (25 La. Ann. 238), and Mr. Morgan produced his commission and was seated Saturday, February 1, 1873. The sole reviewable issue—whether there was due process of law—was presented to the Supreme Court of the United States by Mr. Kennard, and he lost out there also. 92 U. S. 480, 23 L. Ed. 478. Morgan was a lawyer of standing and ability, and the bench in this respect lost nothing, but the appointment preserved the old political phalanx which had been temporarily broken by Kennard's service.

Taliaferro died in October, 1876, and John E. Leonard was appointed by Kellogg, taking his seat at the opening of the November term, 1876. As a matter of fact the eight-year term of the Justices expired by limitation in November, 1876, but the Justices continued to sit until December 23, 1876, when the court adjourned for the Christmas recess, to meet again on Tuesday, January 9, 1877.

During that recess Kellogg reappointed Ludeling Chief Justice and Leonard Associate Justice for the full term. He also appointed John E. King to succeed Wyley, and announced that the places of Morgan and Howell would be filled by "Governor" Packard.

VIII. 1877-1880.

The state election held on November 7, 1876, was involved in the Returning Board troubles of that winter, with the result that dual governments were inaugurated in the ensuing January. Almost the first act of Governor Nicholls was the appointment of a full bench for the Supreme Court. These persons qualified on January 8, 1877, before A. L. Tissot, District Judge of Orleans, and early in the morning of the 9th secret preparations were made by the Nicholls police and militia to capture the Supreme Court building and to seat these judges.

The Packard government had installed its own police in the building, and at 11 o'clock on Tuesday, January 9, 1877, Ludeling,

Leonard and King called upon the sheriff to open court, which he refused to do, and he was thereupon suspended, and a sheriff appointed by the court, who performed the usual ceremony. Opinions were handed down by Ludeling and Leonard, and on motion of the Packard Attorney General the court adjourned.

About noon the Nicholls police demanded the surrender of the building, and after some delay physical possession was taken, and the Nicholls Justices were brought into the court-room, where at noon the court was opened by the sheriff of Orleans parish. The commissions of the Justices were spread on the minutes. Alfred Roman was appointed clerk, several motions and orders were entered, and a distinguished lawyer of the New Orleans bar pronounced a mortuary eulogy—not on the old court, but on a recently deceased district judge—and thereupon the court adjourned out of respect to his memory.

The capture of the courtroom and the installation of these Justices was a political master stroke, and gave the Nicholls government a solidity and authority that was of immense service as matters then stood. For a time it was feared President Grant would order the dispersal of the court, but ultimately he recognized the status quo and the Nicholls Justices remained in possession of the courtroom, which was, moreover, guarded day and night by volunteer militia. After President Hayes' inauguration the support of the army was withdrawn, and the Packard government disintegrated.

The court as thus constituted was Thomas Courtland Manning, of Rapides, Chief Justice; Robert H. Marr, of Orleans, Alcibiade De Blanc, of St. Martin, William B. G. Egan, of Caddo, and William B. Spencer, of Concordia, Associates. They were without exception leaders of the Democracy, and had taken active part in all the stirring events of reconstruction.

The sixth Chief Justice had served on the bench during the War, as previously noted. Marr had been counsel in all the litigation from the Test Oath Case onward, by which much of the evil legislation of Congress against the Southern white people had been emasculated, and he was also one of the foremost inciters of the armed attack on the Kellogg government on September 14, 1874. De Blanc had been a soldier in Virginia with Nicholls, and he was, besides, the foremost citizen of his part of the state, enjoying there respect and veneration second only to that extended

to Governor Nicholls. Spencer had held similar positions in his special bailiwick. In short, the new Justices were recognized everywhere as the flower of the Forlorn Hope which had incessantly waged war upon the Republican stronghold in this state during the seamy years of 1868-1876.

There were scores of deserving lawyers who could have filled the positions with equal skill and dignity. This was particularly the case in Orleans parish, where the faith had been kept under circumstances of professional loss and judicial ostracism which few now living can appreciate. There was, however, no heartburning or sulking among the leaders. On the contrary, they continued the good fight here and in Washington until success crowned the patriotic labor.

At its first sitting the court entered orders reassigning all cases under advisement, and also rearranged the fixed causes so that business could be resumed on the day succeeding. The installation was necessarily a dramatic spectacle—literally it was the act of an embattled people, but the Justices gave no outward manifestation that any unusual or extraordinary event was in progress. The minutes make no note of the abortive session of the evicted judges, nor is any mention made of the physical capture of the seats.

On the next morning, January 10, 1877, the routine business was taken up, and thereafter the tribunal never faltered or delayed in the ordinary conduct of affairs. When the rival government passed away forever, the incident fell unnoted upon a court secure in the confidence and respect of all the people.

Percy Roberts succeeded Gayarre as Reporter, and his labors cover the prior 1877-April, 1880, that is, 29 to 32 La. Annual, inclusive. The cases reported include many interesting commercial and general questions, and several of transcendent temporary importance.

Justice Egan died in November, 1878, and Edward Douglass White, of Orleans, now Chief Justice of the United States, was appointed on January 10, 1879, for the unexpired term. He was seated January 13, 1879, and his first reported opinion is Charpaux & Valette v. Bellocq, 31 La. Ann. 165-169. A commonplace issue is here dissected by a sound civilian, and the conclusions are illuminated by an argument that could only have been made by a devoted student of the principles of the civil law. The

opinion is, furthermore, a notable illustration of White's judicial methods—the concise, lucid statement, the separation of the issue, the massing of words, each chosen for its power in the onset, the march of the argument to the irresistible conclusion—all these are developed and displayed with an art and skill that delight the laboring craftsman.

Considering the circumstances preceding their appointment, it is remarkable that few cases of a political nature reached this court. It was current gossip that there was an understanding that an amnesty or truce would be observed by the new government concerning all political offenses.

In any event, there were only two cases which brought up the past. One was called a "State Trial," and was followed with general interest. This was an indictment by the state against T. C. Anderson, member of the Returning Board, which it was claimed had reversed the will of the voters in the state and presidential elections of 1876. He was charged with altering, forging, and counterfeiting the returns of the presidential election in Vernon parish, and he was convicted before the Superior Criminal Court of Orleans. The information was quashed in the Supreme Court on a technicality, and the defendant was not further prosecuted. The opinion of the court gave opportunity to express some strong views concerning the offense, and it was, indeed, a case that could easily have been determined the other way, if the new régime had been imbued with a desire for revenge. See State v. Anderson, 30 La. Ann. 557.

The other case was the contested election over the office of sheriff of Lafourche, and it is historically interesting, showing the political methods of that day. The court here determined in favor of the Democratic candidate. See Webre v. Wilton, 29 La. Ann. 610.

Two other cases should be noted: 29 La. Ann. 590, where the court decided that the decrees of courts held within the Confederate lines were valid and binding. The state of war then existing was shown by authority not to affect the ordinary course of legal proceedings with parties properly impleaded. The Jurisdiction was maintained and the judgment held to be res adjudicata.

In Southern Bank v. Mayor, etc., 31 La. Ann. 1, the constitutionality of the consolidated bond debt of the city of New Or-

leans was attacked, and the court sustained the assault and invalidated the issue. This case was an extremely important one, and its effect was to release the municipality from a great part of its indebtedness. The decision was, however, reversed by the Supreme Court of the United States in 105 U. S. 302, 26 L. Ed. 1090.

The new government had scarcely been secured in its authority before an agitation for a new Constitution gathered head, and in July, 1879, a Constitution was adopted which shortened the terms of the Justices, and provided for a reorganization of the court in April, 1880.

The necessity for this action was not evident then, and historically is classed under that ingratitude of rulers which the old proverb impresses. The executive, legislative, and judicial departments had each borne the brunt, and throguh their efforts the state had been restored to its proper place among representative governments. A vote of no confidence was hardly to be expected, nor is it justified in history, even though it constantly teaches that the ways of politics are not always scrutable. The writer still recalls his own poignant suffering over the discard of these Justices, whom all the young men of that time regarded as personal friends, and to whose consideration he particularly owes the ability to take an official part in this ceremony.

The personal characteristics of the Justices of the court of 1877-1880 needs a separate essay. Indeed, a study of the work of the Chief Justice alone would yield much material to interest and entertain. The pure, chaste, and elegant English of his opinions was not infrequently sweetened by an Attic salt, though sometimes he used a coarser material. He had a dignity of person—a carriage—which seemed very natural to his intimates, but which was responsible for many stories. This habit affected his conduct in many little ways; for instance, his signature was seldom other than his surname, and, one of his contemporaries speaking of this affection said, there were only a few men in the history of the race who claimed the right: "Moses, Cæsar, Napoleon—Manning."

After his retirement Judge Manning edited and published the unreported cases decided by the Supreme Court during his term as Chief Justice—a valuable addition to the reports of the state.

IX. 1879-1898.

The Constitution of 1879 created a Supreme Court on the frame of its predecessors. The Justices were apportioned to four districts, covering the whole state. Two were allotted to the First District, comprising Orleans, and the five circumjacent river parishes. The salary was reduced to $5,000, and the term lengthened to twelve years; the four Associates first appointed to go out at intervals of two years, their successors to be commissioned for the full term.

Minimum jurisdiction was based on a value in civil cases of $1,000, and appeals in suits for divorce and separation from bed and board were made justiciable by express grant, and for the first time in any Constitution of the state. In other respects the powers of the court remained as before, but a new element was added by article 90 providing that it should "have control and general supervision over all inferior courts." The profession rather hastily assumed that under the writs granted in the same article the court was empowered to review any case where the issue of fact and law would be presented on the record, but the court quickly construed this grant in a way to shut off the legal avalanche that would have followed the first impression.

The Justices were appointed by Governor Wiltz, and the court organized on Monday, April 5, 1880, at New Orleans, with Edward Bermudez of Orleans, Chief Justice; Felix P. Poché, of St. James, Robert B. Todd, of Morehouse, William M. Levy, of Natchitoches, and Charles E. Fenner, of Orleans, Associates. The new corps of judges were lawyers of standing in their respective domiciles, and three of them were destined to leave a deep impression on the judicial record.

The seventh Chief Justice was a Creole, and yielded to none in pride of race and position. He was the son of Joachim Bermudez, sometime parish judge in Orleans under the Constitution of 1812, who had ruled for many years with a determination and authority that furnished one of the best arguments for the abolition of that judicial system.

The Chief Justice was in 1880 in his prime—a big, vigorous man, with a will of iron. He was a ripe scholar in the texts of the civil law, and was obsessed with a conviction that mastery of this science entitled his opinions to unqualified respect. At the bar he was apt to be censorious, particularly to the juniors who

crossed swords on his chosen field. There is no doubt that on the bench he earnestly endeavored to discover the light hidden perhaps under the bushel by counsel presenting such questions, but it was a great and costly expenditure of his strength and a severe trial to his temper, and he did not always persevere in his good intentions. He had a habit that grew on him, to state a proposition and then to sustain it with great array of authorities, usually by citation of book and folio without the title of the case. Typographical and other familiar mischances sometimes made verification of these references a grim satire, which the bar was not slow to advertise.

The senior associate, Poché, was also a Creole and a civilian, but he had more savoir faire, and did not ride full tilt upon the point at issue with all his armor clanking and rattling. When he disagreed with an argument he could say so with as much skill as the Chief Justice, but he did not add to it the terror of voice and gesture, nor seek to overwhelm by a rush of citation. At first the two Creoles seemed to work with one mind, but Poché gradually ceased to lean on the Chief Justice, and when some case would bring about a disagreement the jurisprudence would be inriched by the clash of two strong, tenacious disputants, each pouring out a store of knowledge in the effect to overthrow the ideas of the other.

Fenner was in all respects the antitype of these two. He was a master of precise thought, and clothed his argument in expressive language. Deeply versed in both systems, he had in this respect an advantage over Bermudez and Poché—a mental ambidexterity which often carried the point by mere weight of reasoning.

In the appointments Wiltz had given the shortest term to Fenner, four years, and he was reappointed in 1884. Levy had the six-year term, Todd eight, and Poché ten years. Levy died in the recess of 1882, and Judge Manning came back to the bench under appointment of Governor McEnery, to fill the remainder of Levy's term. He thus achieved the distinction of being thrice a member of the court under different commissions and Constitutions. He was not reappointed, however, and Lynn B. Watkins, of Red River, was named by McEnery on April 19, 1886, for the new term of twelve years, and he was reappointed in 1898.

On the expiration of Justice Todd's term, Ex-Governor Samuel D. McEnery took the place by appointment of Governor Nicholls on June 11, 1888, and in 1900 he was reappointed for twelve years.

Poche's term expired in 1890, and he was succeeded by Joseph A. Breaux, of New Iberia, who was appointed by Governor Nicholls on April 5, 1890, and reappointed in 1902.

The term of Chief Justice Bermudez expired in 1892, and he was replaced by Francis T. Nicholls, appointed by Governor Foster April 5, 1892. The eighth Chief Justice had just surrendered the Governor's chair to Foster, whose first act was this appointment. In April, 1904, Chief Justice Nicholls was reappointed, but under the rule of the Constitution of 1898, he came back as an Associate Justice, and Breaux, the senior Associate Justice, advanced to the seat of Chief Justice.

In 1893 Fenner resigned, and Charles Parlange was commissioned for the remainder of that term by Governor Foster on September 1, 1893.

In 1894 Parlange accepted President Cleveland's appointment to be judge of the United States District Court for the Eastern District of Louisiana, and accordingly resigned as Justice of the Supreme Court of Louisiana.

On February 1, 1894, Henry C. Miller, of Orleans, was appointed in Parlange's place, and in 1896 he was commissioned for a full term.

In 1894, Act 69, p. 80, the Legislature repealed the itinerary system under which the court had held country sessions in midsummer ever since 1812. By this statute the seat of justice was fixed at New Orleans, and all appeals were made returnable thereto at stated periods for each district. For some time before the passage of the act of 1894 the court was sitting in the summer and fall of each year at Monroe, Opelousas, and Shreveport.

In 1896, Act 66, p. 98, the court was authorized to hear and decide in chambers out of term time all matters addressed to its supervisory jurisdiction.

Under the rule established in these laws the court sat at New Orleans from the first Monday of November to the end of June.

This was afterwards changed to begin on the first Monday in October, by Act 149 of 1906.

By Act 92 of 1900, p. 150, the old system of particular return days was abolished, and now all appeals are returnable in not less than fifteen nor more than sixty days.

In 1897 Justice McEnery resigned to accept the office of Senator from Louisiana in the Congress of the United States, and on March 4, 1897, Governor Foster appointed Newton C. Blanchard for the remainder of McEnery's term. The latter had just finished his term as Senator, from Louisiana.

The Reporter of the decisions of the Supreme Court became a Constitutional officer in 1879 (art. 88).

During the period 1880-1897 the opinions were reported by Henry Denis, of the New Orleans bar, from 1880 to 1895, covering 32 La. Annual 521 to 46 La. Annual, inclusive. Commencing with 47 Annual (1895), Walter H. Rogers, also a New Orleans lawyer, reported the decisions until 50 Annual, inclusive (1898).

The work of the court under the Constitution of 1879 has been part of the every-day life of your Honors, and is, I am glad to say, equally familiar to many of those who are participating in this ceremony. Speaking with first knowledge, Judge Fenner said, in his eulogy on Poché June 22, 1895 (45 An.), that the work was performed "in a formative period of our jurisprudence, involving the interpretation of a new and original Constitution, bristling with novel principles, powers, and limitations, and requiring the entire readjustment of our jurisprudence on many subjects and its adaptation to changed conditions"; and he said further that the court had succeeded "in the momentous task of putting into operation the complicated machinery of the new government, so that it should run with the least possible friction or injury to essential principles or individual right and governmental power, and above all in harmony with the Constitution of the United States."

X. 1898-1913.

On November 12, 1898, a new constitution was adopted, and great and fundamental changes were made in the judiciary system of the state. The appellate jurisdiction of the Supreme Court was broadened, and the minimum value of $2,000, established as a basis by the constitutional amendment which had been proposed by Act 125 of 1882, was retained. Original jurisdiction was conferred wherever necessary to enable it to determine questions of fact affecting its own jurisdiction in any case pending before it.

A new matter of great importance was the grant of original jurisdiction in all matters touching professional misconduct, with power to disbar.

The salary was left in the legislative discretion, not to be less, however, than $5,000. The term remained twelve years, and the Governor retained the appointive power, but a new feature was introduced, providing that when the office of Chief Justice becomes vacant the Associate Justice longest in service shall by virtue of that service become Chief Justice.

The session was limited to New Orleans without any authority to the Legislature to prescribe other places.

Power was granted to the court to provide for reporting the decisions and for the publication thereof by contract to the lowest bidder. Publication of concurring and dissenting opinions was, however, prohibited. The judicial history of our race should have been a warning against legislation of this character.

A meager allowance was made for the employment of amanuenses by the Justices.

The Legislature was required to make provision for a suitable and commodious building for the court and its records—a clause which was carried into effect in a worthy and generous way by the erection of the house in which the court now sits.

At the time the Constitution of 1898 became effective the roll of the Supreme Court was as follows: Nicholls, Chief Justice; Watkins, Breaux, Miller, and Blanchard, Associates.

The schedule provided that the Supreme Court here established should be construed to be the same court as the one then existing, and that all persons in office at the adoption of the Constitution should serve until the expiration of existing terms.

In 1899 Justice Miller died, and Francis A. Monroe was appointed on March 22, 1899, and served the remainder of Miller's term, and in 1908 was elected by the people and without opposition to the term he is now filling—the first judge of the Supreme Court to be elected by the people since Duffel's election in 1860. At the time of his appointment Justice Monroe had been sitting continuously since 1876 on the district bench of Orleans parish.

In 1901 Justice Watkins died, and Olivier O. Provosty, of Pointe Coupée, was appointed his successor on March 16, 1901, and in 1910 was elected to a new term.

In 1903 Justice Blanchard resigned in order to enter the canvass for the Democratic nomination for the office of Governor of Louisiana, and Alfred D. Land was appointed to the vacancy by Governor Heard on October 17, 1903. Justice Land was a candidate for renomination, but was defeated by Luther E. Hall, now Governor of Louisiana, who resigned before his judicial term began, and after being elected Governor. Thereupon Justice Land was re-elected in 1912 without opposition.

On April 4, 1904, Justice Breaux was advanced to Chief Justice, under the rule of seniority, the term of Chief Justice Nicholls having expired. The Ninth Chief Justice will continue to hold that office until April, 1914, when his second term of twelve years will have expired.

In November, 1904, an amendment to the Constitution was adopted, making the office of Justice of the Supreme Court elective by the people.

Another amendment of the same year leaves the court discretion to regulate its session, provided it shall begin "not later than the first Monday in the month of November, and ending not sooner than June 30th." However, by Act 149 of 1906, before referred to, the Legislature itself fixed the term to begin on the first Monday of October.

In 1906 (Act 74, p. 115) the Legislature increased the salary to $6,000.

In 1910, by constitutional amendment, it was established that any Justice may retire at the age of seventy-five, on full pay, after not less than fifteen years' continuous service.

In 1911 Justice Nicholls retired under this law, and Walter B. Sommerville, of Orleans, was elected in his place in March, 1911.

In the October term, 1910, the Supreme Court moved from the Cabildo into the new courthouse.

And now, on this 1st day of March, 1913, the court is composed of Joseph A. Breaux, Chief Justice; Francis A. Monroe, Olivier O. Provosty, Alfred D. Land, and Walter B. Sommerville.

Under the authority conferred by the Constitution, the contract for the publication of the Reports was first let to a local publisher who printed the volumes down to 108 La., inclusive. Thereafter the West Publishing Company received the contract. It had been publishing a rival edition. With volume 109 the Report appears in double-column pages.

In 1900 (Act 87, p. 135) the Legislature authorized the State Printer, with the approval of the judges of the Supreme Court, to contract with "a competent lawyer" to edit and index the decisions of the court before publication thereof. The act eliminated the office of "Reporter to the Supreme Court," and the opinions are now published with the name of the editor.

Thomas H. Thorpe succeeded Walter H. Rogers as Reporter in 1899 (51 An.), and he became the first editor under the act of 1900, and continued in office until 1907 (118 La.), when he was succeeded by Charles G. Gill, who is the present incumbent.

In June, 1900, the court by order closed the series Louisiana Annual, and directed that the name Louisiana Reports should hereafter be used, and that the volumes should be numbered in sequence from 1 Martin. Volume 52 is the last Annual, and Vol. 104 La. Reports, of 1900-1901, begins the new series. These volumes are published whenever the opinions make 900 pages of printed matter.

These annuals ought not to close without a reference to Thomas McCabe Hyman, late Clerk of the Supreme Court. He was one of the sons of the Chief Justice of 1864-68, and from early youth had been attached to the clerk's office. He was singularly gifted in the art of conducting a public office. He was the trusted friend of court and bar, and his sudden and unexpected death touched a sympathetic chord in every precinct where lawyers gather.

XI.

I have endeavored to tell the early history of this court with as much detail as the occasion permitted. I have used some discretion with the central portion of the story, and, for reasons which are obvious, have condensed the concluding period to a meager record. I have not attempted to follow the early or later careers of the judges, except where some incident has thrust itself across my path, but I have told sufficient to indicate that this bench has been occupied by many men whom the state delighted to honor, and who have, as a body, deserved the respect of the historian. A more minute inspection might show here and there an individual blemish, but, considering that in the space of one hundred years some sixty-five judges have administered the law in this place of last resort, it is on the whole a pleasing and instructive verdict that history must record.

In the early years of our jurisprudence the judges were unhampered by constitutional and legislative restrictions, and they did not find it difficult to do exact justice by hewing a path close to conscience, common sense, and just reasoning. For many years the tendency of legislation has been to restrict the magistrates by hard and fast rules, but aside from this there has been so much written and said, so much discussed and decided, in the courts of the world that there is now little room for original thinking and not much opportunity to create new precedent.

Viewing the jurisprudence of a hundred years with these thoughts in mind, we are constrained to insist that the judges of today have nevertheless made an impression upon their time as vivid and as lasting as that made by their great predecessors.

Under the text of our Code the judge is bound to proceed and decide according to equity where there is no express law, and, to decide equitably, an appeal is made to natural law or received usages, when positive law is silent. Under the grant of power in the last Constitution this court is able to reach usurpation and injustice, whether attempted by or against the highest or the lowest denizen of the land. Its capacity for good is bounded only by the physical strength of its membership. Your right to review the facts is the most precious possession of the litigant. There has been complaint that it is not always possible to acquaint the entire bench with the facts of each case and there have been occasions when these fancied or real complaints have been made matters of public discussion. This court has power to minimize such complaints, and under Act 70 of 1884, page 93, it is believed that you can establish any rule which would tend to a better administration of justice. It is thought that a printed record would materially assist in the study of the facts, together with a requirement that counsel should, in briefs, admit or concede undisputed facts; or, better still, that they should draw a statement of facts verified by the printed record. All these things might be effected by a mere order of the court, and such order would doubtless meet universal approval.

The New Practice Act of 1912 (157, p. 225) has furnished an entering wedge which should be driven home by the appellate court.

The fundamental features of the high court of Louisiana, wherein it differs in whole or in part from all other tribunals,

are: that it sits as a court of law and equity, exercising both functions in the same case, under pleadings wherein the issue is reduced to its simplest form. That it is bound to review the facts in all civil cases within its appellate jurisdiction. That it may, under such review, remand, affirm, or reverse, or render the proper judgment which the facts and the law or the justice and the right of the case require. That it may supervise and control the course of any inferior court in any case when justice requires its intervention, and as a corollary render such judgment as the circumstances require. That, aside from this control over the issues and the litigants, it is vested with control over the officers who minister to justice at its bar.

With all this vast power the machinery of the court should move resistlessly to the end of complete justice, based upon a thorough understanding and appreciation of the facts of the case. Holding fast to the idea that the right of review upon the facts must never be yielded, it is the hope and the prayer of all who serve honestly and fearlessly before you that some method may soon be found for presenting the issue in this court in such shape that no man may ever hereafter be able to say, "We have been judged without proper knowledge of the record."

When I was selected for the task now completed I said that no one man could do the subject justice within the time allotted for its fulfillment, and that first impression I now sorrowfully confirm. The field of information is uncharted; the records are incomplete; the lives of the men who have made our jurisprudence are to a large extent unwritten; and I am conscious that my effort is at best only a mere scratching of the surface, but, after having lived with my task during every moment that I could steal from other duties, I leave it with the conviction that there lies here for some master mind a great and splendid story which, when written, will light up the history of Louisiana and confer a laurel upon the historian.

The Jurisprudence of the Supreme Court of Louisiana.

By Charles Payne Fenner, of the New Orleans Bar,
Professor of Civil Law, Tulane University
Law School.

We have assembled today, lawyers for the most part, to celebrate the centennial anniversary of the organization of the Su-

preme Court of the state, the tribunal which for a hundred years, except in the comparatively rare case in which federal questions have been presented, has been the last resort of its citizens in controversies involving their rights to life, liberty, property, and the pursuit of happiness.

It is an impressive occasion.

It would be impossible to overestimate the importance of the function in our social and governmental system which has been discharged by this court, or the debt of gratitude under which it has placed the people of the state for the manner in which in the main that function has been discharged.

It is in every way fitting, therefore, that on this, its centennial anniversary, we, its officers, should appropriately commemorate its services.

The occasion is naturally suggestive of reminiscences of the bench and bar, of the great judges who have in the past occupied the bench, and of the great lawyers who in the past have striven mightily at this bar—reminiscences which could not fail to be interesting and inspiring. But these are to be dealt with by others, abler to do so than myself.

I have been asked to say something in regard to the jurisprudence of the court.

I confess that I have been puzzled as to how to deal appropriately with the subject. We lawyers find it difficult enough, heaven knows, to deal with the jurisprudence of the court on the particular questions which are presented to us from day to day; and to be called upon to discourse on the general jurisprudence of a hundred years is indeed a trifle staggering.

In the difficulty in which I found myself after I had accepted this portentous call, it occurred to me that perhaps a few observations in relation to the extent to which, as the result of our peculiar system of law, our jurisprudence differs from that of our sister states would not be deemed wholly inappropriate to the occasion.

There is, I think, a very general impression among our common-law brethren that the nature and extent of this difference are much greater than they really are. Their attitude with regard to our courts is well illustrated by a remark attributed to one of the Justices of the Supreme Court of the United States after listening to an argument in a Louisiana case. He is said to have

remarked to Judge White: "Brother White, I think you had better take that case. I would not like to undertake it. I fear I might be homologated."

It is true, of course, that our terminology is in some respects very different from that of the common law, and that upon many important subjects our law and jurisprudence differ radically from those of the common law states. It is true, nevertheless, that our jurisprudence generally differs from that of the common-law states to nothing like the extent that is generally supposed by common-law lawyers, and to nothing like the extent that might perhaps be *a priori* expected when it is considered that we have a written code of substantive law based upon the civil as contradistinguished from the common law.

For despite this fact, it is true that in a very large proportion of the cases decided by this court the law to be applied is sought from the same sources and by the same methods as are resorted to in the common-law states of the Union.

From the point of view of theory, the jurisprudence of a state in which the whole body of the substantive law has been subjected to the process of codification might be expected to differ radically in nature and extent from that of states in which prevails the so-called unwritten law.

One of the chief purposes of codification is to make the law certain, and in proportion that this purpose is accomplished, it might naturally be supposed that the volume of litigation and of jurisprudence (using the latter term in the sense of reported judicial decisions), would be correspondingly diminished.

And so, too, whether in regard to judicial action in the domain of the unwritten law, we agree with the great apostle of codification, Jeremy Bentham, that the judges really make the law, or with his opponents that they simply declare it, it is quite obvious that the function of a court in interpreting and enforcing a written statute differs very radically from that performed by a similar tribunal in ascertaining and applying the unwritten law.

With all due appreciation of the force of the claim made by the opponents of codification that under the system of unwritten law the judges do not make but simply ascertain and apply the law, it is still true, I think, that the difference between the function discharged by the judges in the two cases is very great, and may, without much inaccuracy, be described as the difference be-

tween declaring what the law is and declaring what in their opinion the law ought to be, always, of course, in the latter case, with proper regard to established precedents and to the rule of *stare decisis.*

In the one case, the court is concerned simply with the meaning of certain written words; in the other, it is called upon, in the light of custom, reason, and precedent decisions based upon the same considerations, to announce what, in its opinion, is the rule of law which ought to be applied in the particular case presented for determination.

Theoretically, therefore, it might very naturally be supposed that the body of jurisprudence of a state in which the substantive law has been codified would differ very materially, both in volume and in kind, from that of the states in which the substantive law is in the main unwritten, in the sense that it has the not been enacted in the form of a statutory command. And where, as in the case we are considering, the code of substantive law in the one state is based upon the civil law as contradistinguished from the common law prevailing in the others, we might naturally expect the difference in question to be still more radical.

According to the theory of the advocates of codification, we should expect, in the first place, that as the result of the certainty attained through codification, the volume of jurisprudence in the code state would be very much smaller.

We should expect, in the second place, to find the jurisprudence of the code state to consist in the main simply of codal interpretations, or, as one of the violent opponents of codification express it, simply "in the interpretation of words."

It might be expected, finally, that there would be in every branch of the law fundamental differences of jurisprudence reflecting the differences between the civil and common law systems.

Whatever may be true in this regard in the case of other states and countries which have enacted codes of substantive law based upon the civil-law system, I think it must be admitted that in Louisiana, particularly of recent years, these differences are much less marked than might, from the point of view of the believers in the theory of codification, be *a priori* expected.

I do not think, in the first place, that it can be justly claimed that as the result of codification, we have attained a greater cer-

tainty in the law which has relatively diminished the volume of litigation, even as regards those subjects which are specifically covered by the Code. Our experience and that of France in this respect would seem to justify the claim of the opponents of codification that the limitations of human capacity for written expression are such as to make the attainment of certainty in a written code of substantive law well-nigh impossible.

In France, for instance, I think the following statement by an eminent advocate of the theory of codification, Mr. Sheldon Amos, must be admitted to be well founded. He says:

"It is well known, for instance, that the set of French Codes, which in time became the most comprehensive and self-dependent of all, have been completely overridden by the interpretations of successive and voluminous commentators, as well as by the constantly accruing decisions of the Court of Cassation. In France, as was intimated before, in treating of another subject, there can be no reliance in any given case as to whether a judge will defer to the authority of his predecessors, or will rather recognize the current weight attached to an eminent commentator, or will extemporize an entirely novel view of the law. The greatest possible uncertainty and vacillation that have ever been charged against English law are little more than insignificant aberrations when compared with what a French advocate has to prepare himself for when called upon to advise a client."

With us, partly, perhaps, because we have had no commentators, but principally because we have fully adopted the common rule of *stare decisis*, the uncertainties of codal interpretation have not been so marked. Speaking relatively, however, I do not think it can be justly claimed that our jurisprudence exhibits any material gain in legal certainty as the result of codification.

It is certainly not true either that our jurisprudence consists wholly, or indeed in the main, of mere codal interpretations, or "in the interpretation of words." The most cursory examination of our reports, particularly those of comparatively recent years, will discover that in a very large proportion of the decided cases the rule of law applied has been deduced from the same sources and by exactly the same process as would be resorted to in a similar case in any common-law state, and there are lawyers in this city engaged in important branches of practice who rarely have occasion to consult the Code.

That this is due in some measure to the fact that both our judges and lawyers too frequently "sin the sin" of resorting to common-law authorities when the true rule for decision might be found in the Code I thing must be admitted. Forming as we do, in effect, an integral part of a much larger community with the other component parts of which we are united by the strongest ties of race, blood, and common interest, and in all of which the common-law system prevails, there is naturally manifested in our jurisprudence a strong and ever-present tendency to conform to common-law standards. And that this has resulted not infrequently in unjustified departures from the letter of the Code is doubtless true. It is to this tendency which Mr. James C. Carter, sometime leader of the American bar, referred, when in one of his philippics against the theory of codification, he said in reference to Louisiana:

"The defects so strikingly characteristic of French jurisprudence would have been repeated here (in Louisiana) but for the practical good sense which has been exhibited by the bench and bar of that state. Largely imbued with the principles and methods of the English common law, they have looked to that body of jurisprudence, so far as the Code permitted them, as containing the real sources of the law, and have fully adopted its maxim of stare decisis. Nothing is more observable than the extent to which the English and American reports and text-books are cited as authoritative in that state. It would seem that the courts, except where there is some provision of the Code directly in point, and except in those cases where the civil law, which lies at the basis of the legal system of Louisiana, notoriously differs from the common law, seek the rule in any given case, in the same quarters in which it is sought by us, and then inquire, if the occasion arises, whether there is anything in the Code inconsistent with the rule thus found."

The appeal here to common-law authorities is justified, moreover, in many cases, because upon many subjects, as the result of the extent to which the earlier common-law judges, in the formative period of English jurisprudence, adopted the principles of the civil law, there are no very material differences between the two systems.

The very liberal admixture of common-law principles and methods of decision in our jurisprudence is, I think, due, in the

main, however, to quite another cause, viz., that in a very large proportion of the cases which are presented to our courts our Code furnishes no definite rule for decision.

And this must ever be true with any code of substantive law. Civilization has certainly not yet attained a condition of stability in which it is possible, in the nature of things, that statutory rules can be enacted at any one time to cover all the varying groupings of fact which may arise in the future, and it is therefore entirely impossible to wholly supplant the unwritten law.

This was not, indeed, the theory of Bentham, the great English apostle of condification. His theory was that nothing could be law except an enactment of the Legislature; that the so-called unwritten law, or, as he called it, "judge-made law," should be wholly extirpated; that it was practicable to provide by statute for every future case; and that if a case should arise for the decision of which no statutory rule could be found, it should simply remain undecided.

In his celebrated letter to President Madison, he said:

"Yes, sir, so long as there remains even the smallest scrap of *unwritten law* unextirpated, it suffices to taint with its own corruption—its own inbred and incurable corruption—whatsoever portion of statute law has ever been, or can ever be, applied to it."

Most of his disciples, however, have abandoned this arrogant theory of their master. They admit that it is impossible to provide in a code rules for the decision of all possible future cases, and that when a case does arise which is not covered by the Code, it must nevertheless be decided, and that in such case the unwritten law must be resorted to.

This was admitted by Mr. Field, who in his Introduction to the Civil Code, proposed by him for adoption in New York, said:

"This Code is undoubtedly the most important and difficult of all; and of this it is true that it cannot provide for all possible cases which the future may disclose. It does not profess to provide for them. All that it professes is to give the general rules upon the subjects to which it relates which are now known and recognized."

And such was the theory of the codifiers of France and Louisiana.

In France, article 4 of the Code Napoleon reads:

"The judge who shall refuse to decide a case upon the ground that the law is silent, obscure, or insufficient may be prosecuted as guilty of a denial of justice."

That under the terms of this article it is the duty of the French judges, in all cases presenting questions in regard to which the statute law is silent or insufficient, to decide the question nevertheless in accordance with equity, reason, and custom, in other words, to resort for decision to the unwritten law, is well settled. The article was inserted in view of the injustice which had resulted in France prior to the Code Napoleon from the exercise by the judges of the power to refer such cases to the legislative department of the government for solution; the solution being by way of making a law to fit the case. It was admitted that the exercise by the judges of the function thus delegated to them was in a certain sense legislative. But as between what seemed to them two evils, that of making the judge a legislator or that of making the Legislature a judge, the French codifiers, for obvious reasons, chose the former as the lesser.

And so with us it is expressly provided by article 21 of the Code:

"In all civil matters, where there is no express law, the judge is bound to proceed and decide according to equity. To decide equitably, an appeal is to be made to natural law and reason or received usages, where positive law is silent."

It is clear that here is a recognition of the unwritten law in the broadest sense, with a designation of the sources from which it is to be derived that are identical with those to which common-law judges have resorted from the beginning. And when it is remembered that our Code was framed nearly a hundred years ago, and that there has probably never been a period in which the novelty of the conjunctures challenging judicial inquiry has been greater than during the period since that time, it ought not to be a matter of surprise that a very large proportion of our jurisprudence has consisted in the declaration and application of the unwritten law.

And when we consider further the inevitable tendency toward uniformity of custom, and therefore of law and jurisprudence, which always obtains among people united as are the peo-

ple of this state with those of her sister states, it should be still less a matter of surprise that our judges, in seeking to decide according to equity, reason, and received usages, should have resorted in the main to the majestic fabric of common-law jurisprudence rather than to the comparatively unfamiliar and inaccessible authorities of the civil law.

And so it has resulted, as might have been expected by any student of the forces which always and inexorably shape the law and jurisprudence of any free people, that despite the fact that a hundred years ago we adopted a code of substantive law based upon the civil, as contradistinguished from the common law, our jurisprudence is to a very large extent based, and confessedly based, upon the common law.

I trust that nothing that I have said will be construed as an attack upon the theory of codification, or as indicating any general dissatisfaction with the practical results of the application of that theory in Louisiana. My purpose has been simply to indicate some of the limitations of the theory as discovered in the jurisprudence of the state. I have not intended to discuss or to express any opinion upon the general expediency of the codification of private substantive law. And by private substantive law, I mean the law regulating the conduct of men in their relations with each other as individuals, as contradistinguished from the law regulating their conduct in relation to society or government, which may be termed "Public Law."

As a result of the scant study I have been able to give the subject, my impression is that the expediency of such codification depends upon the conditions existing in the state or country in which it is proposed, and that no general rule can be safely announced on the subject. For Louisiana, in view of the conditions which existed at the time she was admitted into the Union, I am quite convinced that codification was necessary. If I lived in a common-law state of this Union, I think I should be opposed to it. The question is, however, too big for any one to venture a definite judgment upon it without special study, and certainly entirely too big to be treated incidentally.

I should also be very much concerned if I thought any one was likely to construe anything I have said today as indicating a lack of appreciation of the civil law, or a preference for the common law as a system of jurisprudence. This is a question entire-

ly distinct from the question of codification. The civil or Roman law had been developed by the great Roman jurisconsults into the most scientific and consistent system of unwritten law that the world has yet seen; four centuries before the Corpus Juris Civilis was promulgated, and the Pandects, or Digest, of Justinian, the one of the three works constituting the Corpus Juris that covered the field of private law, was really not a code in the modern sense of that term. It was an abridgment of the treatises of the great jurisconsults of a former age of Roman jurisprudence, which during that age were authoritative in much the same sense that judicial opinions are authoritative under the common-law system. For several centuries prior to the accession of Justinian the jurisprudence of Rome had sadly degenerated. As noted by Gibbon, her great jurisconsults had been supplanted "by an ignoble multitude of Syrians, Greeks, and Africans, who flocked to the imperial court to study Latin as a foreign tongue and jurisprudence as a lucrative profession." In so far as private law is concerned, the work performed under Justinian was, as above stated, the confection of an abridgment or digest of the treatises of the earlier Roman jurisconsults, which when completed was declared to be authoritative law. It resembled a code in much the same sense as would an abridgment or digest of certain selected decisions of common-law courts which might be declared by statute in a common-law state to be the only decisions entitled to force and effect as authoritative law. It did not change the system of Roman jurisprudence as essentially a system of unwritten law.

The truth would seem to be, as claimed by Mr. Carter in his work, "Law, Its Origin, Growth and Function," that the earliest code of substantive law, in the modern sense of the word "code," was that adopted in Prussia in 1751.

As, of course, is well known, the Corpus Juris Civilis was completely submerged and lost to view during the Dark Ages. From the time when it was afterwards discovered, the Pandects or Digest, being that portion of the work which covered the field of private law, has exerted an influence upon the law and jurisprudence of all civilized countries, not excepting England, which has justified the fine phrase: "Rome rules us still, not by reason of her power, but by the power of reason."

THE LOUISIANA BAR, 1813-1913.

By Judge T. C. W. Ellis, Senior Judge of the Civil District Court.

May it please your Honors, Ladies and Gentlemen: We are here in this home of the Supreme Court of Louisiana at the invitation of its judges, in honor of the one hundredth anniversary of its organization.

The presence of the learned justices, and their invited guests, the judges of the various state courts, the Governor of the state, members of the General Assembly, and the heads of the several administrative departments, signalizes the gathering of all, who represent in behalf of the people the sovereign powers of our state.

We have, also, presiding with our Justices, the judges of the federal courts, for this judicial circuit and district, who have, for the day, laid aside their labors to join in this celebration.

Distinguished members of the reverend clergy are also with us, to lend the recognition of our holy religion, and to pronounce its prayers and benedictions.

The lawyers of our state, with the president of the Louisiana Bar Association as master of ceremonies, are here in large numbers, as also are the mayor of our city, and other representatives of its municipal government, together with very many of our fellow citizens.

And last, but best of all, have come many representatives of the splendid womanhood of our state, to add the witchery of their charming presence, in sympathetic accord with the purposes of this impressive occasion.

They are thrice welcome here, as they join us all in our salutations to this august tribunal, and in our invocation, that God may ever "bless the state of Louisiana, and this honorable court."

The first thought pressing for utterance is that of reverent gratitude to the Great Author of our being—the King of Kings, the Judge of Judges—that our lives have been prolonged to see this auspicious day, and that, through all the vicissitudes of 100 years of her checkered, and sometimes stormriven, career, He has vouchsafed to our state existence as a sovereign among the sovereigns composing the Federal Union, and to her people the blessings of enlightened government and of civil and religious liberty.

The second is one of gratification that this tribunal has given the wholesome example that respect should be cherished for the memory of those who have wrought well in their day, in the formation and preservation of this fabric of beneficent government, with just pride for achievements, that go to make up the glory of the state.

It has been said, that a people without patriotic sentiment is ripe for the despot's rod.

With glad hearts we all join in the celebration of this impressive anniversary.

Distinguished lawyers have given us, in eloquent terms, the story of this historic court, and of the jurisprudence it has been upbuilding in the last 100 years.

The request that brings me here suggested that, as an older member of the state judiciary, I should, in behalf of that department, voice its appreciation of the lawyers composing the Louisiana bar of the past century. The kind terms in which this request was communicated will be a pleasing memory with me while life shall last.

My theme, therefore, is the Louisiana Bar.

As introductory to any notice of the bar, as a body of lawyers, it will be useful to consider the qualifications necessary to entitle the individual to admission to its membership. The first requisite is that he be a citizen of the state, of sufficient residence to make him known to the community where he lives, and that he must be a person of good moral character. Beyond this, he must establish that he has spent the prescribed time in the study of the law in its various branches, as laid down by statute, or by the rules of the Supreme Court, and he must prove, by the test of an examination before a committee of lawyers selected for the purpose, and a final examination before the court which has power to grant or deny the license, that he has the mental aptitude and has acquired the legal learning necessary to equip him for his duties as a lawyer.

And, last of all, he must take a solemn oath, not only to support the Constitution and laws of the United States and of the state, but, also, that in his practice he will demean himself honestly and with fidelity to every duty and trust with which he may be charged.

All this accomplished, he becomes a member of the bar, and as such an officer of the court, with all the privileges this relation implies, but subject to disbarment for misconduct or willful breach of the duties that devolve upon him as a lawyer.

To his client, he owes, and is held, to the highest standard of fidelity. It is his duty to give to the advocacy or defense of his client's cause his best endeavors within the limitations of personal and professional propriety. He is barred from disclossing the admissions or confessions of his client, given to him under the veil of his employment, and under no circumstances can he acquire interest antagonistic to those of his client in the subject-matter wherein he is engaged.

In all his relations as a practitioner his position is one of high privilege and exalted trust.

Considering the bar as a body of lawyers thus tested and licensed, it may be the more readily understood why its influence, from the organization of our state to the present time, has been so great.

It cannot be denied that it has impressed itself on every page of the history of our state. In every lawmaking body, it has been a factor, often originating and invariably assisting in shaping the statutory declarations of what shall be the law. On every judicial bench it furnishes from its ranks an arbiter, hearing, considering, and deciding, and thus aiding in the upbuilding of the jurisprudence so necessary to the construction and successful operation of the statute law.

All this takes no notice of the fact that in his practice the lawyer has been the counselor and teacher of the people in their individual interests and concerns, as well as the adviser of all the departments of the government, state and general as well as local. It must be so from the very nature of the structure of our political system and our social fabric, as institutions regulated by law; for how can law regulate, unless its application and operation be directed by those who understand it as a science.

All is not claimed in this respect for the bar as a body of lawyers. There have been very many, from the other walks of life, who have exerted powerful influence in the conduct of our affairs as a people, but, as this political structure, the result of 100 years of progressive activity and evolution, towers in our presence today, we cannot forget that its strength and fair pro-

portions could not have been attained without the active and controlling participation of the membership of the Louisiana bar, as legislators, as administrative officers, as lawyers and judges, as well as citizens.

In illustration of what we claim for the bar, in the foundation and up-building of our state, let us particularize. The task that confronted the lawyers of this state at the opening of the century, which closes this day, was one unusual difficulty. The territory comprising the state had been the colonial possession, first of France, then of Spain. Proconsular government had in turn directed the affairs of the French and Spanish subjects, who, induced by royal grants, or special privileges, or by the hope of wealth, or the love of adventure, had settled here and formed its population. By charter direction the laws and ordinances of France and the customs of Paris had been ordained and applied during the French occupation. When Spanish rule supervened, the laws of Castile prescribed regulations for matters of ordinary civil nature, and prescribed the form of practice for judicial procedure. Later on the strong hand of O'Reilly seemed to have swept all else from the system, and to have ingrafted the laws of Spain as the law of the land. Whether this was the effect of the official action of this self-willed Spanish Governor or not, such was believed to have been the result. In the matter of criminal procedure—the arrest, accusation, trial and punishment for alleged crime—there was slight protection for the accused if constituted power was intent upon conviction and punishment.

Nothing could be more different than were the regulations prescribed by kingly power, or its proconsular representatives, for the government of the people of Louisiana, as a French, or Spanish province, from the American plan, whose life and spirit were the guaranties of Magna Charta and the common law, and the democratic theory of government by the people and for the people.

After the purchase of the territory by the United States, during the administration of Mr. Jefferson, the Congress had framed for it a territorial government. The legislation thus organizing the territory of Orleans had vouchsafed to this people the guaranties of the English and American Bill of Rights, the trial by jury, the immunity from inquisitorial methods of ac-

cusation and prosecution, exemption from cruel and unusual punishments, etc.

In the domain of federal jurisdiction and control these guaranties of the Great Charter, embodied in the Constitution, had already become the heritage of the people, and the territorial federal courts were the present and effective agencies for their application and enforcement.

In aid of the plan of transforming this king-governed territory into a state of the American Union its Legislature, elected by its people, had caused to be framed the Civil Code of 1808, modeled, for the great part, on the Napoleon Code, and purporting to be a compilation of laws in force in the territory, with alterations to suit the conditions arising from the change of government, but it left in force all laws, except so far as they might conflict with its provisions. With the settlement of questions arising under this state of affairs the ultimate determination was left to the Superior Court of the territory presided over by George Mathews, of Georgia, Joshua Lewis, of Kentucky, and Francois-Xavier Martin, of North Carolina, appointed, respectively, by Presidents Jefferson and Madison, and their work is to be found in the first and second volumes of Martin's Reports.

Later on came the enabling act of Congress, authorizing the people of the territory of Orleans to frame a state Constitution, preparatory to their admission as a state. In the convention, elected by the people for this purpose, the Constitution of 1812 was framed, and, after submission, was approved by Congress, which enacted the legislation admitting the territory into the Federal Union, as the state of Louisiana.

In the framing of this Constitution the lawyers of that period exercised a controlling influence. Their task seems to have had less of difficulty than that falling to their successors in 1845, 1852, 1879, and 1898, perhaps because there was then less distrust of the agencies of the government, particularly the legislative branch, and doubtless because there were then no distracting issues of state policy, such as have grown up, necessarily, with the marvelous developments of later times.

Fresh in the minds of the framers of this, our first Constitution, were the discussions as to the outlines and checks of organic law requisite for the formation of a more perfect union, in the Convention of 1787, and in the battle royal waged at the hust-

ings, and in the several state conventions, over the issue of adoption of the federal Constitution.

The result was that the state Constitution, projected on the plan of the federal instrument, with its seven articles and schedule, was readily adopted as the framework upon which the three co-ordinate departments of the new state government were to find their rock-bed basis.

It is a tribute to the wisdom of this plan of our fathers that the state government was easily organized, its completion being signalized by the organization of the Supreme Court, one century ago today, and that it operated for 33 years, or nearly one-half as long as the combined lives of the six successive Constitutions that have since been adopted.

For 12 years, the Supreme and inferior courts of the state, and the lawyers of that period, were called to deal with issues arising from the variant systems of laws which have been referred to.

In 1825 a Revision of the Code of 1808, under legislative authority, was prepared and presented by those eminent lawyers, Moreau-Lislet, Pierre Derbigny, and Edward Livingston. It was adopted by the Legislature, and became the law.

Soon after, the General Assembly, expressing the weariness of the people from the operation of laws existing in the colonial days, which brought conflict and uncertainty, undertook to cut the Gordian knot of difficulty, resulting from prior conflicting laws, not abrogated by the Code of 1825, by the repeal of all laws in force anterior to its provisions.

Then came to Louisiana lawyers cases of rights acquired, or liability incurred, under laws existing prior to 1825, and on their hearing the Supreme Court held that it was not the legislative intent to abrogate those principles, which were founded on the Roman law and the civil law of France and Spain, under which legal rights, recognized by the jurisprudence, had been acquired.

It was the jurisprudence thus formed and announced that breathed into the provisions of our Civil Code, itself framed on the model of the Napoleon Code, the life and spirit of the civil law, and opened up, as sources for its explanation and elucidation, the jurisprudence of France and the commentaries of her jurisconsults, as well as the wealth of the Roman law and its exposition wherever it had prevailed.

It is to controversies, growing out of conflicting laws and regulations imposed upon the people and property of Louisiana when, in its chrysalis form, its territory was the pawn and sport of kings, passing from one domination to another, until it found its safe moorings, as a state of the American Union, beneath the ægis of the Constitution, that we turn, for the most splendid triumphs of the Louisiana lawyer, and to the golden age of judicial achievement. It was in controversies thus arising that the intellect and industry of the Louisiana advocate met the foeman worthy of his steel, in his opposing professional brother, and that from their forensic discussions, just as the electric spark leaps from the contact of opposing currents, the truth came, fixing the principle and its application in the judicial pronouncements that gave to the bar and to the Supreme Court of Louisiana the highest respect and position throughout the world.

There were very many questions of law arising in that period from the peculiar conditions then existing. Questions arising from land grants, questions as to batture and riparian rights growing out of title, or possession, of lands, bordering our great river, enlisted the skill and learning of our greatest lawyers, and resulted in the announcement of fixed rules, by the Supreme Court, to govern all such cases.

But it was in controversies where the laws of different countries were to be considered and applied that the genius and learning of the Louisiana bar and the wisdom of our Supreme Court signalized and recorded their greatest and most far-reaching achievements.

Cases of this nature, in variant forms, brought under consideration the operation of the lex domicilii, the lex loci contractus, the lex rei sitæ, the lex fori, and from them rules regulating what was then called the conflict of laws, but now known as the science of private international law, were simplified, and became well-recognized rules of personal privilege and property right.

Cases decided along those lines in the Supreme Court of Louisiana were cited and accepted as authoritative by the Supreme Court of the United States, and these settled rules were embodied in Mr. Justice Story's treatise on the Conflict of Laws, the pioneer work on this subject in the United States, and have held their position, as controlling precedents, in succeeding juris-

prudence, and in all of the works upon this once perplexing subject.

Martin, Porter, and Mathews, and their successors upon this bench, great as they were, would have been embarrassed by these questions, without the treasures of reason and authority and research which were brought to their assistance by the bar of that time. The lawyers of that day were as the voice of "one crying in the wilderness," preparing the way and making straight the path through which was to lead the evangel of a consistent and settled jurisprudence in its progress, as the measure of justice and right for all the people.

It is not that those lawyers, or those judges, were greater intellectually, or in their learning and acquirements, than their illustrious successors at the bar, or on the bench. It was theirs to live and serve when those great questions arose; it was their opportunity and their privilege to live and to act at that formative period of our history.

It is the record of all human annals that every crucial occasion has evolved men of endowment and courage to meet its issues and necessities, and in God's providence it fell to the lot of the first judges of this tribunal, and to the eminent lawyers who then occupied the stage of human activity here, to confront and to settle the important questions which then arose.

It was thus, when our federal system was crumbling under the disintegrating influences that had proved the inefficiency of the government, under the Articles of Confederation—when Elsworth had resigned, and John Jay, his successor, refusing to continue as Chief Justice of the Federal Supreme Court, had expressed his belief that the system was a failure, and that the "one Supreme Court" was a tribunal, without power for usefulness—that John Marshall became Chief Justice, and soon, under the operation of his masterful mind, the government of the United States began to fulfill and carry into execution the designs of its founders. It was to him that opportunity fell to provide, by liberal and beneficial construction and interpretation, for the enforcement of the delegated powers of the general government, and to make them efficient agencies for the general welfare. As has been said by another, it was his to take the Constitution, which he found "paper," and to transform it into "power." It was his to take its skeleton framework, and by his plastic hand to clothe it with flesh

and muscle, to infuse into it the rich blood of health, and to breathe into its nostrils the breath of life.

And so it was, when the admiralty jurisdiction, hedged in by the narrow restrictions that confined it to the high seas and to the ebb and flow of the ocean tides, had become inefficient, that Chief Justice Taney brushed away those restrictions, and by philosophic reasoning and luminous interpretation that carried conviction extended that jurisdiction, so necessary to the people, as well as to the government, to the great lakes and inland streams, making "navigable waters" the test, instead of the "inland flow of the tides."

And so, it was the opportunity of the great lawyers who composed the bench and bar of Louisiana to meet the conditions that arose, in the early days of our state, from conflicting laws and systems, that had controlled when she was a Spanish or French province, or a territory of the United States, and to mold and shape the legislation and jurisprudence which should, with safety to the privileges and rights of all its people, transform them, as a community, into a state of the American Union.

Royal edicts, charter grants, kingly prerogative, laws of Spain and laws of France, were all to be considered, as to their operation upon the rights and privileges of the people, and were to be reconciled, so as to bring them into harmonious relations with the liberal institutions and beneficent form of government ordained in the Constitution for the regulation of the states composing the Federal Union.

That they met these problems and solved them in the interest of the state and of all her people is the finding of impartial history, and is the proudest record of the Louisiana bench and bar.

From this day, looking back to the lawyers and judges of that pioneer period in our history, the eminence they occupy in the world's annals of judicature and politics seems crowned with the glory of a sunlight that brightens as the years pass away.

Tradition has handed down much of interest regarding these great men as individuals, but my theme does not lead me there, but rather confines me to the Louisiana bar as exemplified by its record of public service.

Soon after the admission of the state, the Louisiana lawyer came into prominence as a political factor. In the state, as throughout the Union, alignments had been formed between the

federalist, or whig idea, on the one hand, and the democratic theory, on the other. The former favored the latitudinous construction of the Constitution, in the enlargement of the powers delegated to the general government. The latter stood for the strictest interpretation, and denied all power beyond the express terms of the mandate.

The currency, the national bank, the tariff, the public domain, and many questions came on for discussion; fortunately economic issues that admitted of peaceful solution. But then came burning questions growing out of the institution of domestic slavery, intensified by the admission of Missouri and Texas as states, and later by the issues that arose from the Missouri Compromise, by the acts for the admission of Kansas and Nebraska—the one party demanding that slavery should be excluded from the territories, and the other claiming the right of slaveowner to settle in the territories, the common property of all the states, with his slave property, subject to expulsion, if the territory, when erected into a state, should declare against domestic slavery. The decision of the Supreme Court in the Dred Scott Case, deciding the Missouri Compromise repugnant to the Constitution, and that the colored man was not a citizen of the United States in the jurisdictional sense, intensified the issue, and added to the flames that burned, until extinguished by the Civil War.

Events crowded, and the dread issue of secession came on; the Civil War, the defeat of the South, the military occupation, the chaos that came during the days of alien and negro domination, the steady resistance of a people who, though conquered in war, refused to yield to the rule of an inferior race.

It is not a grateful nor pleasant task to revive those sad memories of the long-ago, and I turn from them. I only recall them to say that, throughout them all, two generations of Louisiana lawyers took active part on the one side and on the other in all the discussions, as well as in all the events, that make up that dark period in our history.

In all of these troubles the Louisiana lawyer was not a laggard. In the closing scenes, especially in all the measures of resistance to the misrule and oppression that followed the Civil War, whether at law or otherwise, almost unanimously, whether they had sided with the Confederacy, or with the Union, they were on the side of the rights of the state and the people, and

during the last 10 years of resistance, with many of them as leaders, the struggle went on, until, in April, 1877, when, under the leadership of him who was twice the deliverer of this state, him who, with maimed limbs and wasted body, was twice the Governor of the state, and long the Chief Justice of this tribunal, ended our enthrallment as a people, and came the restoration of our state to her rightful position in the sisterhood of the states of the Union.

Thus far this paper has dealt with the Louisiana lawyer in his capacity as a lawyer, and in his connection with the political activities that have agitated the state. I present him now in the literary contributions that he has made to its laws, and to its jurisprudence, and generally to the literature of the period.

Francois-Xavier Martin was among the early contributors to the literature, both legal and secular of the state. In North Carolina, where he resided prior to his appointment by President Madison as one of the judges of the Superior Court of the territory, he had been a printer, while practicing law. There he had published a revision of the laws of that state, a work on Executors, another on Sheriffs, Their Powers and Duties, and a translation of Pothier's work on Obligations, from the French into English.

It may be of interest, to note that Martin was a member of the order of Ancient Free and Accepted Masons, and that in November, 1789, at the funeral of Richard Caswell, Grand Master of that order in North Carolina, who had been a general in the War of the Revolution, a senator in Congress, and a Governor of the state, he delivered the funeral oration, on behalf of the Grand Lodge of that state. This address appears in a work published in 1867, entitled Washington and his Masonic Compeers. His selection for this duty shows the position that he had attained in his adopted home. It is an address suited to the occasion. In it may be detected inaccuracies of expression, showing that he had not yet mastered the English language. His quotations from Antony's oration over the dead body of Cæsar attest his familiarity with the works of the great English poet.

With the admission of the state into the Union, the Superior Court of the territory ceased to exist, and Martin became a member of the Louisiana bar, being admitted to practice soon after the organization of the Supreme Court, and practiced as a lawyer, acting as Attorney General of the new state until his appointment

to the supreme bench in 1815. He edited and published the reports of the territorial Supreme Court in two volumes, and thereafter the 18 volumes of the Supreme Court Reports. Meanwhile, he had written the history of Louisiana, which he published in 1827. This work was republished, in the early 80's by the late James A. Gresham, with a memoir of Judge Martin, by Wm. Wirt-Howe, once a justice of this court—a monograph rich in its treasures of historical research, and a most valuable contribution to the literature of the law of our state. As a historian, Judge Martin's purpose seemed to be to record events as they transpired, with little in the way of deduction or comment. Dr. Monette, in his History of the Valley of the Mississippi, while quoting liberally from Martin, states that there was some confusion of dates, and in this respect inaccuracies in parts of Martin's History.

In 1817, Marseilles, the place of his birth, hearing of the achievements and honors of her illustrious son, elected him a member of her Academy, and, in 1841, Harvard, the leading college of his adopted country, conferred upon him the degree of Doctor of Laws.

Though not in order of time, it may be appropriate here to state that another member of the Louisiana bar condensed the 20 volumes of reports published by Martin into 10 volumes, abridging the less important, and reproducing in full the more important opinions of the court, so that nothing was lost, adding an analytical digest of the 20 volumes of excellent arrangement and accuracy. The author was Thomas Gibbes Morgan, of Baton Rouge, La., a gentleman of rare accomplishments, and of the highest rank as a citizen and lawyer.

The first general work of this nature was a digest, in two volumes by Moreau-Lislet, of all general legislation from 1804 to 1828, to which he appended the Treaty with France, of April 30, 1803, by which Louisiana was acquired; also the Constitution of the United States, and the Enabling Act of Congress of February, 1811, under which the territory was authorized to adopt a state Constitution, preparatory to its admission as a state; the Constitution adopted on January 22, 1812; the act of Congress of April 8, 1812; and the supplementary act of April 14, 1812, by which the state was admitted into the Union—so that the heterogeneous and cosmopolitan people of the state, whether American, French, or Spanish, should have perfect knowledge of all the pertinen

facts by which Louisiana had become one of the states of the United States, the organic laws, federal and state, which were to govern, and the definite territorial limits within which these laws, and all the sovereign functions of the new state, were to operate as the successor of the proconsular governments, alternately, of France and Spain, and the territorial government by the United States, subsequent to the date of the purchase in 1803.

Thirteen years later, the revision of the statutes, from the change of government to 1841, inclusive, was made and published by the collaboration of Henry A. Bullard, a Justice of the Supreme Court, and Thomas Curry, Judge of the Ninth Judicial District, who found time, amid their judicial labors, to do this work.

Eleven years later came the revision of the statutes by those eminent lawyers Levi Pearce, William W. King, and Miles Taylor, in 1852, and in 1856 this was followed by the compilation, edited and published by U. B. Philips, of West Feliciana, a lawyer of much ability and learning.

The next revision came in 1870, of the Code of Practice, Civil Code, and Statutes, made necessary by the changes which had been superinduced by the Civil War, edited by that eminent lawyer, John Ray, and formally adopted by the General Assembly.

Although 43 years have passed, we are without subsequent authoritative digest or revision of our Codes or Statutes. Not that the lawyers of our state have been unmindful or neglectful, for we have had, since, repeated editions of Codes and Statutes, and digests by many of them; the first, by Albert Voorhies, twice District Judge, once Associate Justice of the Supreme Court, and Lieutenant Governor of the state; then, the Revised Laws of Louisiana, by Solomon Wolff, following the Revision of 1870, with amendments up to 1910, and references to all the construing jurisprudence, a work of transcendent merit, and of indispensable utility to the bench and bar, as well as to the layman. Another work, worthy of notice, is the Index to the Statutes of Louisiana, from the beginning, up to the date of its first publication, by Robert Hardin Marr, Jr., a work of the greatest utility to the profession, followed by a second edition, which brings the index up to 1912. This author has also given us a work on the Criminal Jurisprudence of Louisiana, which lightens the labor of judge and lawyer, and is received as authority everywhere—the same author, whose name, as a member of the Commission to frame a

Code of Criminal Procedure, gives earnest that the issuance of that work, now in embryo, will not be long delayed.

Another illustration of the labors of the Louisiana lawyer along these lines is found in the project for the revision of our Civil Code by those accomplished lawyers, R. E. Milling, W. O. Hart and Judge W. N. Potts, which changes the original text to conform to the jurisprudence, and to present conditions, as to many provisions of that Code.

An edition of the Code of Practice of 1828, published by M. Greiner in 1844, with luminous references to the jurisprudence and statutory amendments up to that date, was the vade mecum of all the lawyers of 50 years ago.

The edition of the same Code, annotated, published by Henry L. Garland, and the revised edition of this work by Solomon Wolff, which brings the statutory amendments and references up to 1910, are works of the highest value.

Other editions of the Civil Code, annotated by Upton and N. R. Jennings in 1838, by the late James O. Fuqua and Thomas Gibbes Morgan, in English and French, later on by Judge Eugene D. Saunders, in the 80's and more recently by E. T. Merrick, Jr., with notes of his father, the late Chief Justice Merrick, whose name the author bears—the last edition bringing the references up to 1912—all of great value, have been published, attesting the labors of Louisiana lawyers in the interest of the state and people. Another edition of the Code annotated was by the late K. A. Cross, edited by Theo. Roehl, Esq.

These digests and revisions, with annotations to date, were all based upon the original Civil Code, which was the labor of Louisiana lawyers in preparing a Code for the new American state, for the most part taken from the Napoleon Code, and bearing the same relation to it that the French jurists selected by Napoleon bore to the Napoleon Code, and that Tribonian and his colleagues bore to the Justinian Code.

The Supreme judicial interpretation of the laws gave the jurisprudence, and became part of the law. Reports, annually issuing, accumulated, and necessitated accurate digests, analytically arranged, and to this need the Louisiana lawyer gave response in the digests of the decisions of the Supreme Court: First by Deslix; then by Benjamin and Slidell; then by W. D. Hennen in

his two editions; by Charles Louque; by S. R. & C. L. Walker; by Mr. Taylor; and by the present Chief Justice, Jos. A. Breaux.

The Reports of the Decisions of the Court of Appeal by Judge Frank McGloin, and those of the reorganized court, as now existing, are worthy of notice as valuable contributions to the literature of the law of our state.

Works of the character noticed—that is, the revisions and annotations of the written law, or the proper analysis and digesting of judicial opinions—involve, necessarily, incessant labor, industry, research, and discrimination, as well as learning, and they all stand as enduring monuments to the public service rendered by the lawyers of the period under review.

In 1847 Henry M. Spofford, afterwards a Justice of the Supreme Court, in collaboration with District Judge E. R. Olcott, prepared and published The Louisiana Magistrate. It was intended for the use of justices of the peace, clerks of court, notaries, and sheriffs, giving their powers and duties, and whence derived, as well as models and forms for their official acts. It was a work of signal merit, so plain in its terms that the veriest Dogberry, called to the judgment seat in the important work of arrest and commitment for crime, or the trial and judgment and appeal in matters of civil interest involving less in value than $100, could have no excuse for error in his procedure, no matter how wide of the mark the arrows of his judgment might fly. A revised edition of this work was published in 1870 by J. A. Seghers and Patrice Leonard, members of our bar.

The survivors of the bar of that day, especially those who practiced in the country parishes, will yield the palm to the accomplished and polished Spofford for this incomparable work, which the brilliancy of his subsequent career as a Justice of the Supreme Court and in the domain of politics did not obscure or cause them to forget. The Civil Law of Spain and Mexico, by Gustavus Schmidt, in 1850, commends itself to all civil law lawyers, who have interest in tracing, to their source, many provisions of our Code. It is a work worthy of remembrance.

The work on Citizenship published by another Louisiana lawyer, Alexander Porter Morse, my classmate in the Louisiana University, is one evincing learning and ability of the highest order, painstaking research, and fine discrimination. He was the

counsel of the Republic of France in the 80's, before the Franco-American Claims Commission.

We may, at least, claim a share in the distinction achieved by Judah P. Benjamin, whose high character as a lawyer was fixed here, and who went hence to his brilliant career as a United States Senator, then as cabinet officer to the Confederate President, and, after the defeat, as a British lawyer, and to his final preferment as Queen's Counselor. His work on Sales is authority everywhere.

The industry and ability of the late Kimball A. Cross, also my college mate, remain to us in his treatise on the Louisiana Law of Pleadings and of Successions.

Another contribution was a work on Taxation, a vexed and vexing question, which for 30 years past, like Banquo's ghost, has refused to down at our bidding, and even at this day returns to plague the lawyers and their hapless clients, as well as the judges. Of this work, Eugene D. Saunders, lately Dean of the Law Department of the Tulane University of Louisiana, and sometime United States District Judge, was the author.

Other works which may be named are, one by M. M. Cohen, on the Admiralty, another, by Judge J. E. Leonard, upon Federal Practice and Proceduce, and an Analytical Digest of Tort Cases in Louisiana, published last year, supplementing the "analytical index of personal injury cases" issued in 1900 by H. H. White, of the Alexandria bar—all works of merit and worthy of notice.

Another instance of the labors of a Louisiana lawyer is worthy of mention before this tribunal, where he sat as an Associate Justice. I allude to the late Robert Hardin Marr. He found time, amid the cares of an active and extensive practice, to translate from the French into the English, with his own comments, notes, and references appropriate to our state, the commentaries of Marcadè.

Marr was a Tennessean, and had achieved rank and position there, in the 40's, when he was attracted by the wider field of activity in this city, and located here. By his application he acquired the perfect knowledge of the French language, translating, writing, and speaking it with accuracy. Realizing the importance of the knowledge of this language, the mother tongue of a great part of our people, he knew that in it were treasured the judicial pronouncements and the commentaries of the jurists whose

works have made France immortal. He had no need of translations, but it was his desire to contribute to his brothers of the bar who might not have equal advantages the works of those jurists, just as translations into the English of the works of Domat and Pothier from the French, and of the Justinian Code and the Institutes from the Latin, had placed those treasures of the civil law within the reach of all English-speaking students and lawyers. He had completed his work, and it was ready for publication, when the Civil War came on, and he left, obedient to the call of duty. During the occupation by the federal troops and his enforced absence, this literary treasure was lost. I have heard from his own lips the story of the laborious care spent in its preparation, and his sorrow that the profession should, by its destruction, be deprived of the benefits which it was his sole purpose to confer.

For himself, this tribune of the people, in their after days of sore affliction, frail and delicate physically, but intellectually and morally strong, this lost work was not needed to commemorate him as a lawyer, or as a man.

In this review of the Louisiana lawyer, as he is to be judged by the literary evidences of his labor, I beg to present one other—Bernard J. Sage, in his work, The Republic of Republics, issued from London, England, in 1865, its third edition appearing in 1878, a volume of 450 pages, with an appendix of "much apposite matter, now out of print, but instructive and valuable." Mr. Sage was one of the counsel selected for the defense of Jefferson Davis, late President of the Confederate States, then held a political prisoner, on the charge of treason, with Charles O'Connor, of New York, as leading counsel. By understanding, Mr. Sage, went to London, and there, incognito, this argumentative review of the federal Constitution was prepared, purporting to be the "Monograph of P. C. Centz, Barrister," a fictitious name. This method of issuance was adopted because of the fierce sectional prejudice existing at that time, and the fear that an appeal to law or to reason, from any southern or democratic source, would not be considered. In this disguise it was sent to the President of the United States, to the Press, and to many leading citizens, and passed current, at the time, as the work of an English lawyer. Its first form was that of a protest against the trial of Jefferson Davis by a military commission. Its burden was to show that an act of a citizen of any one of the United States, done in obedience

to the call of his state, which had withdrawn from the Union, whether rightfully or wrongfully, could not constitute treason against the United States government, which represented only those states remaining in the Union, and therefore that Mr. Davis could not be successfully tried for treason under the Constitution of the United States. It was read by the then President, Andrew Johnson, and pronounced by him "historically and logically correct." It is asserted and believed that this unanswerable argument of Mr. Sage appealed to the great lawyers and statesmen, then advisory to the federal government, and that, under their advice, the issue of treason, vel non, of Mr. Davis was allowed to drag, without determination, until the general amnesty proclamation of the President, in 1868, ended the matter.

This contention, based upon a compilation of all that had been written, or stated, in the formation of the general government, as the general agency of the sovereign states, operating its authority directly upon the people, only within the limits of its delegated powers, was not new, but it came in a form, that attracted attention from the men in power, at a crucial period, when the issue could no longer be evaded. It may have contributed to save the Constitution from further breach, and to leave untouched the principle upon which rest the sovereign rights of every state of the Union.

As long as respect for this system shall endure, the name of this Louisiana lawyer will be honored, as one of those who labored successfully in his day for the supreme benefit, not only of his own state, but of every state of the Union. He died poor, at 82 years of age, in September, 1902, and his remains rest in hallowed ground, in the Nicholls tomb at Thibodaux.

His fitting monument is this work.

It should be a text-book in every institution where constitutional law is taught.

There is nothing in it to indicate that Mr. Sage was its author, but I know from himself that this work was his own. I have, as a treasured souvenir of our friendship, a copy which he gave me in December, 1887, with my name and his inscribed by his own hand.

One other instance, where the professional labors of the Louisiana lawyer resulted in the settlement of a constitutional question of interest to the state and to the people deserves men-

tion here. It grew out of the prosecution and trial, before the United States Circuit Court, in this city, of a number of persons who had participated in the riot of April, 1873, at Colfax, in Grant parish, charged with crime committed on account of the race and color of the victims. After conviction by the jury, on certain of the counts, a motion in arrest was interposed, raising the question whether the prohibitions of the fourteenth amendment were operative directly upon the people as individuals, or only as an additional limitation to the power of the state. At the argument the Circuit Judge, the late W. B. Woods, and the Associate Justice of the Supreme Court, Mr. Justice Bradley, differed in opinion, and certified the question to the Supreme Court, which sustained the motion in arrest. I had the honor to participate in the conference at which this motion in arrest was drawn. This settlement ended prosecutions of that kind before the federal tribunals, and was a boon to the people of the Southern States, who were struggling to free their states and themselves from the rule of an inferior race.

Robert H. Marr, Sr., Judge William R. Whitaker, and E. John Ellis, for 10 years member of Congress from this state, all of whom have passed away, were the counsel who raised and argued that question.

No sketch of the work of our lawyers in the line of the literature of the law would be complete without reference to the work of Mr. Henry Denis on the Contract of Pledge, published in 1898, wherein he treats of the pledge at common and at civil law. This work is a distinct addition to the sum of legal knowledge. For years Mr. Denis was Reporter of the decisions of this court, and also Professor of Civil Law in our University.

Outside of the literature of the law, the lawyers of the period under review have made valuable contributions to the general literature.

Charles Gayarre, a lawyer and judge, Federal Senator, Assistant Attorney General, and for years Secretary of State, was the author of the History of Louisiana as a State, as a Territory, and of the Romance of that History, also of the Life of Philip Second of Spain, and other publications.

A little work, but worthy of mention for its merit, is Grandmother's Tales of the Acadians—that heroic and devoted people who, true to their religion and to the land of their origin, when

driven by merciless oppression from their homes in Acadia, now Nova Scotia, found their way to Louisiana, where floated the banner of La Belle France, with its spotless lilies, and where her rich language was spoken, cast their humble lot in that dream-land along the silvery Teche, destined to give to the state of their adoption some of its most distinguished citizens, in peace and in war, came to us almost as a lullaby of our childhood, from the pen of Judge Felix Voorhies, my classmate, and still an honored member of the bar. Alas, that it should shatter some of the idols that the genius of Longfellow, in his matchless Evangeline, had created. Alas, that grandmother's tradition has written down Gabriel as false and faithless. Alas, that sweet spirited Evangeline, broken-hearted and bereft of reason, rests, after life's fitful dream, in the cemetery of beautiful Lafayette. "Correspondence with My Son at Princeton," published in 1858, by James H. Muse, after the tragic death of his son, on the ill-fated steamer "Col. Crossman," may here be mentioned. Mr. Muse was a distinguished lawyer, and as a legislator was the author of the statute abolishing imprisonment for debt in this state.

And how upon us steals the sad dreamy poesy of the brilliant Richard Henry Wilde. Mr. Wilde had been Attorney General of Georgia, and for eight years a member of Congress from that state. He became a member of the Louisiana bar in the 40's and was professor of Constitutional Law in our University. His monograph on Dante, the Italian poet, and on Torquato Tasso, survive him. But it is his poetry that has preserved his name and memory. Colonel William H. Sparks, in his Recollections of Fifty Years, a work of rare merit, published in 1870, that perpetuates so much of interest regarding the lawyers and public men of the early days of our history as a state, thus quotes S. S. Prentiss, the great orator, a member of the Louisiana bar: Repeating Wilde's verse:

> "My life is like the prints which feet
> Have left on Tampa's desert strand.
> Soon as the rising tide shall beat,
> All trace will vanish from the sand.
> Yet, as if grieving to efface
> All vestige of the human race,
> On that lone shore, loud moans the sea,
> But none, alas, shall mourn for me,"

Prentiss said:

"Why did not Wilde give his life to literature, instead of the musty maxims of the law? Little as he has written, it is enough to preserve his fame as a true poet. He was distinguished as a lawyer, and as a Congressman, but his name and fame will only be perpetuated by his verse, so tender, so true to the feelings of the heart. It is the heart which forms and fashions the romance of life, and without this romance, life is scarcely worth the living."

Doubtless there are other literary works of the members of the bar that have escaped this notice.

If to this record of extrajudicial and extraofficial legal effort be added the opinions of the judges, reported from the first of Martin to the current volume, the innumerable briefs of the lawyers engaged, filed with every submitted case, and frequently perpetuated by the reporters, the vast proportions of the labors of the lawyers of this state, in the great work of forming and shaping her institutions, and policy, and jurisprudence, will appear.

It must not be supposed that all that has been said of matters where lawyers have been controlling factors in molding the jurisprudence, or in shaping the policy of the state, or wherever they have impressed their influence upon conditions affecting the people, was the result of combination, or organization, upon their part. It was all the result of unorganized, individual effort, in the practice of the profession, or in the ordinary walks of life.

It is only of recent years that bar associations have become factors for the greater benefit of the profession and of the people. The American Bar Association, and the associations in the States, strengthening and supporting its recommendations, have become potential factors for the general good. Of the former, more than 130 Louisiana lawyers are members, and many of them are also members of the State Bar Association.

First of all, its influence has brought higher standards of qualification for admission to the bar. The requirement of liberal general education, with longer terms of study and instruction in the law, is one feature. The adoption of a code of ethics, inculcating morality, gentility, fairness, and integrity in the professional life and practice of the lawyer, with the suggestion that

it be taught to the student as a distinctive branch, is another and all-important one.

Another is found in the effort to bring about uniformity in the laws of the several states of the Union in matters of commercial regulations, such as negotiable instruments, bills of lading, and many other subjects, that concern the general interests of the people. Our own statutes, of recent enactment, on the two subjects last mentioned are results brought about by the bar for the general welfare.

Success has also crowned their efforts in the recent law regulating the practice before the courts by which unnecessary and wasteful delays in bringing cases at law to their determination will be, to a great extent, avoided.

The limits of this paper will not admit of further detail. The Louisiana Bar Association is on the threshold of its activities and usefulness. Its motives are disinterested; its purposes look to the general welfare; its desire is to place the laws of the state and the administration of justice on a footing to keep pace with the requirements of this age, in all matters where this can be done consistently with the unchanging rules of justice and right.

One other observation. I would be recreant to my duty as a judge, if I should fail to declare, in this presence, the assistance that the Bar Association has always rendered to the courts. The amicus curiæ, as we have known him, has generally been some member of the bar, representing interests identical with those of one or the other side of the controversy on trial, but not of counsel. For this interest, which he may be employed to serve, he appears on the brief, ostensibly as amicus curiæ. That the assistance to the court is generally valuable there can be little doubt, but with experienced judges the appearance may bring some such measure of distrust as in the olden days attached to the Greeks when they came bearing gifts, and the effort of this "friend of the court," perhaps is received and considered as that of counsel regularly employed. Doubtless in every such case the motives of counsel have been honorable and praiseworthy but generally the appearance has been that of the interested attorney.

It is not so with the Bar Association, when called upon by the judges. In two instances of serious importance the Civil District Court has had occasion to take measures: First, in the matter of a statute requiring their action in the readjustment of certain of-

ficial salaries payable out of the judicial expense fund; second, as to the proceedings to be had in the adjudication and security to be given by the adjudicatee in the matter of the Fiscal Agency for the keeping of the large funds that come into the registry of the court. Those were questions of serious public importance. Doubts as to the constitutionality of the first of these led the judges to request the assistance of the Bar Association, and forthwith there came three of its members each one of whom had been its president. They gave to us, freely and without stint, the results of their painstaking research, and the force of their reasoning, in argument, and led us, as we believe, to a safe and wise determination, from which no appeal was taken.

In the second instance, the president of the association, here today, leading in these ceremonies, came at our request, and gave the result of his thorough research and examination, bringing a solution, to the satisfaction of all concerned, which will stand as a precedent in this most important duty of safeguarding the public interest, in the selection of the Fiscal Agent Bank, and the form of security to be given.

It is a pleasure, as well as a duty, to acknowledge, in this presence, these disinterested and meritorious services.

Representing the period closing this day, four generations of lawyers appear. They embrace those who participated in the organization of Louisiana as a state, and in the forensic contests that framed our early jurisprudence, and they include the rising generation of lawyers, just admitted to the bar, who gives so much promise of usefulness.

Among them appear a number who have served as Governors of our state, many who have represented the people in the two houses of the federal Congress, two, at least, who have been cabinet officers, two who were ambassadors to the Court of France, two others to the Republic of Mexico, one who was ambassador to the Russian Court, and another to the Court of Spain. Still another was the special minister and envoy of the government of the Confederate States to the European powers during the Civil War. One of them, who served for years as a state district judge, and as a member of the Constitutional Convention of 1879, was appointed judge of the federal Circuit Court, and afterwards was promoted to the Circuit Court of Appeals for this circuit, and is now the president of that tribunal, a position second only to that

of Justice of the federal Supreme Court. He is with us today, sitting as an invited guest of the Justices of this court. Another, who became a member of our bar, was for some years an Associate Justice of the Supreme Court of the United States. Still another, a native of Louisiana, once a Justice of this court, afterwards a senator in the federal Congress, later became an Associate Justice, and is now the Chief Justice of the Supreme Court of the United States.

Three of them have been presidents of the American Bar Association—the first, in his day, the acknowledged leader of the bar, a senator in the Confederate Congress, once Attorney General of the state, genial and high-spirited, whose gentle and engaging manners, aside from his transcendent abilities, bound him, as with hooks of steel, to our affections.

Another, who came with an invading army, and after the Civil War located here, soon won our admiration and esteem by his personal qualities and high accomplishments, and especially as a Justice of the Supreme Court in 1872, when he refused to take part in the conspiracy that placed our state under a usurpatory government—the fabrication of an infamous election returning board—and resigned his high office, who, like Pilate, seeing that his opposition could "prevail nothing," "took water and washed his hands," refusing to be a party to the subjugation and wrongs of a brave and liberty-loving people.

The third is with us—and long may he remain—the unquestioned leader of our bar, in whose matchless abilities, civic virtues, and public spirit, as a citizen, we take pride, as we hail him our colleague and friend.

Another public service rendered by the lawyers of this period is that since the foundation of the law department of our University its professors, with few exceptions of late years, were members of the bench and bar of this state.

In the Civil War almost all of our lawyers of the arms-bearing age took military service—many as private soldiers, a number who attained the rank of brigadier or major general, many more who became field officers or commanders of batteries. Many of them lost their lives; many received grievous wounds. Shining examples of the volunteer soldiery of those fateful days are before us today in the persons of three of the Justices of this court,

and two of their invited guests of the federal courts, presiding with them.

Some followed the flag of the Union, and many more, the banner of the South.

Time has sped away, and 50 years separate us from those eventful days. Through their gathering mists and shadows, the young and dashing soldier has disappeared, and with him have gone the antagonisms and bitterness of that unhappy period, as well as the issues that called him to the tented field.

Those of us who survive, as veterans of that civic strife, are no longer enemies. We are comrades and friends—citizens of one common country.

We have learned to respect each other's feelings and motives; our children have intermarried, and our interests have become identified. Without excuse, or apology, for what has been in the past, without revival or discussion of issues that have been settled, we all are content that the stars, which gleamed in the blue cross banner of the South now shine resplendent in the spangled flag of the Union, the representatives of free, peaceful, and coequal states.

That restoration has been complete was proven in the recent war with Spain, when the youth of the South rallied, en masse, to the standard of the Union, among them some who are now among the leading lawyers of this state.

Cursory and incomplete, this review of the Louisiana bar, in its relation to the jurisprudence, to the literature, to the general affairs of the state, and to the political events of the last 100 years, has ended. If time would admit of personal notice of many of its members, the recital of their high qualities as men, their abilities and accomplishments, would be full of interest.

And now we ring down the curtain upon the first century of Louisiana lawyers.

As they pass us in review, memory recalls so many noble spirits, the friends of our earlier days and manhood, the loving, the brave, the learned, the eloquent, the brilliant, the refined, the devoted, the true!

We strew sweet flowers of affection upon the bier of each one who has passed to the Eternal Beyond, and drop the sympathetic tear as we proudly and confidently give them to the judgment of history, which, with stern justice, shall pass upon the quick and

the dead. And on this day we register our faith that, in that Grand Assize, when the summing up shall give the "whole truth, and nothing but the truth" and when there shall be no error of judgment, the lawyers composing the Louisiana bar of the past 100 years will stand with those who have served well in their day and generation—among those "good and faithful servants," to whom shall be given the glad plaudit, "Well done."

The Centennial Year.

By Joseph A. Breaux, Chief Justice.

Thoughts regarding the early judicial history of the state suggest themselves on this occasion, after having heard the eloquent addresses made in the presence of this distinguished audience.

In the early part of the century just passed, Louisiana was fortunate in having able jurists on the bench and at the bar. Jurisprudence at first was in an incongruous condition even after the state had passed under the dominion of the United States. She observed a set of civil-law rules strangely compounded of the English Case Law, French Code Law, and Spanish Usages. Each citizen, doubtless, favored the system of laws of the country in which he was born and reared. This was not conducive to a satisfactory condition. The people of the state succeeded in emancipating themselves from this strange compound of laws by adopting a code system and also by adopting the best principles of the common law, that beautiful system which originated, it is said, in the forests of ancient Germany.

The Roman classic system needs no commendation to the extent that it has been adopted in this state. As to the common law, the other part of our present system, some one has said it is based on Saxon customs molded by Norman lawyers; it does not suggest a museum of remote antiquity, none the less we always seek to find a worthy past for all that is good. The two systems of law, civil and common, were blended. The results of the labors of the bench and bar of that period are still felt. Although a century has passed, during all these years these united systems of laws, civil and common, have come down to us with the impress placed upon them in the early years of the century.

Sir Henry Maine, in one of his interesting published lectures, says of our Code (and I quote him literally) that of all the republications of the Roman law it is the one that appears to him the fullest, the clearest, the most philosophical and the best adapted to the exigencies of modern society. The author also asserts in his lecture on Roman law that, as adopted in Louisiana, it has produced "sensible effects on the older American states."

The late Mr. Carter, an eminent lawyer of the New York bar, having retired from active practice, devoted the evening of life to the study of the Philosophy and Origin of Law. In a book recently published, he comments favorably regarding Louisiana and her laws.

The jurists of the early days of Louisiana well understood the effects of the laws upon society. The morality and progress that the laws foster; the great power of justice in human affairs. Referring especially to those jurists of other days, we might say of them that in their trying difficulties they have succeeded as well as those of other climes and other countries in developing a reasonably satisfactory system of laws.

A hundred years of judicial history! During that time many changes have taken place in the administration of the laws. None the less there still remains something of the remote past. The frequent saying that time does away with all things is not always true; all is not reduced to dust; must of the great and useful remains. Among these are our system of laws and the records of our jurisprudence. Those of an early date still offer inviting fields to the student of law and to the older members of the profession as well.

There is a complete list of the reports of decisions of each year from the first handed down in territorial days to date. They contain valuable records of communites, of families, of titles, and of other vast and varied interests of a state and of her people. The records of all these years are complete except two years (1863 and 1864, during which time there were no regular decisions rendered). There was a provisional court organized with undefined jurisdiction. Judge Peabody (by whose name the court is sometimes known) wrote a pamphlet about his court—a copy of which I happen to have in my possession. Among other things he says that during the Civil War, to serve a process outside of the city, it required a squadron of cavalry and a section of artillery.

The records of that court were deposited in Washington, D. C. The student of history may some day find in them something to read.

After this allusion to the judiciary—which I am purposely anxious not to make lengthy—I pass without transition (as they are a part of the courts) to the practicing attorneys. They have an advantage over the members of the bench who are only of one bench; the functions of the judges extend no further, while the practicing attorneys are members of all the courts. The good lawyer is a good citizen. I hope no one will think that I am influenced by Vanity Fair when I say that he is a good man. The well-informed, intelligent, and independent lawyer deserves (and nearly always everywhere receives) just an entitled recognition and consideration.

There are prominent names in other fields of endeavor in this state; none more prominent than those of her lawyers. Not wishing to mention those of a recent date, it is a pleasure to name Edward Livingston, pronounced by Jeremy Bentham and others the first legal genius of modern times, Etienne Mazureau, John R. Grymes, J. P. Benjamin. There are many others well known to tradition and to history.

We have with us on this occasion distinguished judges of the federal courts, to whom we extended a most hearty welcome. We have also extended the right hand of friendship to our Brothers of the different courts of the state present. Likewise we have had the great pleasure of welcoming Governor Hall and of listening to his interesting address.

The name of Hall is suggestive. Judge Dominick Hall of the state Supreme Court in 1813 (a short time thereafter judge of the federal court), had been arrested on order of General Jackson. Judge Martin in his history of Louisiana states that Judge Joshua Lewis of the state court left his camp with a writ of habeas corpus to compel General Jackson to release Judge Hall. Judge Martin adds: Judge Lewis was a member of the Orleans Rifles, one of the companies of General Jackson serving at Chalmette, and was at the camp of his company when he issued the order. Thereupon General Jackson ordered the arrest of Judge Lewis, but changed his mind and recalled the order of arrest and

immediately released Judge Hall. The sturdy General doubtless came to the conclusion that two judges in the right were more than a match for him.

The incident is mentioned in order to add that in those days the best of feeling must have existed between the state and the federal authorities.

The fraternal feeling began early in our history. May it continue always! Courts reasonably united, all seeking to properly administer the laws, are among the powerful agencies in the cause of "faith, of country, and of home."

PRAYER.

Offered by the Rt. Rev. Davis Sessums, Bishop of Louisiana.

Let the words of my mouth, and the meditation of my heart, be always acceptable in Thy sight, O Lord, my Strength and my Redeemer.

O Lord God, the Supreme Governor of all the earth, look down, we pray Thee, upon all who bear rule among Thy people and upon those who are appointed to execute justice, and especially upon the Supreme Court of this commonwealth. Give them wisdom and grace, we beseech Thee, rightly and impartially to discharge their solemn duties, so that by their judgments and decrees law and order may be upheld, justice be administered, innocence relieved, the claims of mercy be duly regarded, righteousness be promoted, and the establishment of Thy Kingdom be advanced amongst men.

Enlighten, we pray Thee, all who frame the laws of this land, and especially of this state, and increase and strengthen amongst the people the spirit of obedience as the safeguard of liberty. To those who judge and those who obey impart, we beseech Thee, single-minded devotion to the truth; so that prosperity and moral and religious welfare may be joined together, and peace and happiness be multiplied amongst us; through Jesus Christ our Lord. Amen.

The grace of our Lord, Jesus Christ, and the love of God, and the fellowship of the Holy Ghost, be with us all evermore. Amen.

APPENDIX.

The Celebration of the Centenary of the Supreme Court of Louisiana, Saturday, the First Day of March, Ninenteen Hundred and Thirteen, New Orleans.

THE COURT—1813.

Dominick Augustin Hall.
George Mathews.
Pierre Derbigny.
Attorney General: Francois-Xavier Martin.

THE COURT—1913.

Chief Justice: Joseph A. Breaux.
Associate Justices: Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, Walter B. Sommerville.
Clerk of Supreme Court of Louisiana: Paul E. Mortimer.
Attorney General: Ruffin G. Pleasant.

CEREMONIES.

Saturday, March First, Nineteen-Thirteen in the New Court House Building.

EN BANC.

The Supreme Court of Louisiana and the Judges of the Federal Courts.

Invocation,
Very Rev. J. D. Foulkes, S. J.

Minutes,
(Monday, March 1, 1813)
Paul E. Mortimer, Clerk.

Opening Address,
Joseph W. Carroll, Master of Ceremonies.

Address of Welcome,
Governor Luther E. Hall.

The Centenary of the Supreme Court.
"The History," Henry Plauché Dart.
"The Jurisprudence," Charles Payne Fenner.
"The Bar," Thomas C. W. Ellis.

Response by the Chief Justice,
Joseph A. Breaux.

Benediction,
Right Rev. Davis Sessums, D. D.

THE SUPERIOR COURT OF THE TERRITORY OF ORLEANS

Ephraim Kirby.....Mar. 1804-Oct. 2, 1804
John B. Prevost.....Mar. 1804-Nov. 14, 1808
William Sprigg .....Jan. 17, 1806-Nov. 10, 1806
George Mathews .....Jan. 19, 1806-Mar. 1, 1813
Joshua Lewis .....Nov. 10, 1806-Mar. 1, 1813
John Thompson .....Nov. 14, 1808-Mar. 21, 1810
Francois-Xavier Martin .....Mar. 21, 1810-Mar. 1, 1813

THE SUPREME COURT OF THE STATE OF LOUISIANA.

Dominick Augustin Hall.....Mar. 1, 1813-July 3, 1813
George Mathews .....Mar. 1, 1813-Nov. 14, 1836
Pierre Derbigny .....Mar. 9, 1813-Dec. 15, 1820
Francois-Xavier Martin .....Feb. 1, 1815-Mar. 19, 1846
Alexander Porter, Jr. .....Jan. 2, 1821-Dec. 16, 1833
Henry Adams Bullard .....Feb. 4 ,1834-Feb. 1, 1839
Henry Carleton .....April 1, 1837-Feb. 1, 1839
Pierre Adolphe Rost .....Mar. 4, 1839-June 30, 1839
George Eustis .....Mar. 4, 1839-May 30, 1839
George Strawbridge .....Aug. 3, 1839-Dec. 1, 1839
Alonzo Morphy .....Aug. 31, 1839-Mar. 19, 1846
Edward Simon .....Jan. 1, 1840-Mar. 19, 1846
Rice Garland .....Jan. 1, 1840-Mar. 19, 1846
Henry Adams Bullard .....Jan. 1, 1840-Mar. 19, 1846
George Eustis, C. J.....Mar. 19, 1846-May 4, 1853
Pierre Adolphe Rost .....Mar. 19, 1846-May 4, 1853
George Rogers King.....Mar. 19, 1846-Mar. 1, 1850
Thomas Slidell .....Mar. 19, 1846-May 4, 1853
Isaac T. Preston .....Mar. 1, 1850-July 5, 1852
William Dunbar .....Sept. 1, 1852-May 4, 1853
Thomas Slidell, C. J. .....May 4, 1853-June 18, 1855
Cornelius Voorhies .....May 4, 1853-April 27, 1859
Alexander M. Buchanan.....May 4, 1853-May 6, 1862
Abner Nash Ogden .....May 4, 1853-June 30, 1855
James G. Campbell.....May 4, 1853-Oct. 17, 1854
Henry M. Spofford.....Nov. 6, 1854-Nov. 1, 1858
James N. Lea .....July 23, 1855-April 6, 1857
Edwin Thomas Merrick, C. J.....Aug. 1, 1855-April 1, 1865
James L. Cole.....May 4, 1857-Mar. 12, 1860
Thomas T. Land.....Nov. 1, 1858-April 1, 1865
Albert Voorhies .....May 3, 1859-April 1, 1865
Albert Duffel .....Mar. 12, 1860-April 1, 1865
Peter E. Bonford..... ———1863- ———1864
Thomas C. Manning..... ———1864- ———1865
William B. Hyman, C. J.....April 1, 1865-Nov. 1, 1868
Zenon Labauve .....April 1, 1865-Nov. 1, 1868
John H. Ilsley .....April 1, 1865-Nov. 1, 1868
Rufus K. Howell .....April 1, 1865-Jan. 9, 1877
Robert B. Jones.....April 1, 1865-July 1, 1866
James G. Taliaferro .....July 1, 1866-Nov. 3, 1876
John T. Ludeling, C. J. .....Nov. 1, 1868-Jan. 9, 1877
William G. Wyly.....Nov. 1, 1868-Nov. 3, 1876
William Wirt Howe.....Nov. 1, 1868-Dec. 3, 1872
John H. Kennard.....Dec. 3, 1872-Feb. 1, 1873
Philip Hickey Morgan.....Feb. 1, 1873-Jan. 9, 1877
John Edwards Leonard .....Nov. 3, 1876-Jan. 9, 1877
John Edward King .....Jan. 9, 1877-Jan. 9, 1877

Thomas C. Manning, C. J.....Jan. 9, 1877-April 5, 1880
Robert Hardin Marr.....Jan. 9, 1877-April 5, 1880
Alcibiades De Blanc.....Jan. 9, 1877-April 5, 1880
William B. Egan.....Jan. 9, 1877-Nov. 30, 1878
William B. Spencer .....Jan. 9, 1877-April 5, 1880
Edward Douglass White.....Jan. 11, 1879-April 5, 1880
Edward Bermudez, C. J.....April 5, 1880-April 5, 1892
Felix P. Poché .....April 5, 1880-April 5, 1890
Robert B. Todd .....April 5, 1880-June 11, 1888
William M. Levy.....April 5, 1880-Nov. 5, 1882
Charles E. Fenner .....April 5, 1880-Sept. 1, 1893
Thomas C. Manning .....Dec. 1, 1882-April 19, 1886
Lynn B. Watkins.....April 19, 1886-Mar. 2, 1901
Samuel Douglas McEnery.....June 11,1888-Mar. 4, 1897
Joseph A. Breaux .....April 5, 1890-April 4, 1904
Francis T. Nicholls, C. J. .....April 5, 1892-April 4, 1904
Charles Parlange .....Sept. 1, 1893-Jan. 1, 1894
Henry Carleton Miller.....Feb. 1, 1894-Mar. 4, 1899
Newton Crain Blanchard.....Mar. 4, 1897-Oct. 17, 1903
Francis T. Nicholls.....April 4, 1904-Mar. 18, 1911
Joseph A. Breaux, C. J.....April 5, 1904-April 5, 1914

THE ATTORNEYS GENERAL.

Francois-Xavier Martin 1812-15
Etienne Mazureau 1815-17
Louis Moreau-Lislet 1817-18
Thomas Bolling Robertson....1819-20
Etienne Mazureau 1820-23
Isaac T. Preston.....1823-29
Alonzo Morphy 1829-29
George Eustis 1830-32
Etienne Mazureau 1832-40
Christian Roselius 1841-42
Isaac T. Preston.....1843-45
William A. Elmore 1846-50
Isaac Johnson 1851-52
Isaac E. Morse.....1853-55
E. Warren Moise 1855-59
Thomas J. Semmes.....1860-62
F. S. Goode.....1862-64
Andrew S. Herron.....1865-65
B. S. Lynch.....1865-67
Simeon Belden 1868-71
A. P. Field.....1872-76
William H. Hunt 1876-76
Hiram R. Steele.....1876-76
Horatio N. Ogden.....1877-79
James C. Egan.....1880-84
Milton J. Cunningham.....1884-88
Walter Henry Rogers.....1888-92
Milton J. Cunningham.....1892-1900
Walter Guion 1900-12
Ruffin G. Pleasant.....1912-

THE REPORTERS.

Francois-Xavier Martin 1809-31
Branch W. Miller.....1831-34
Thomas Curry 1834-42
Merritt W. Robinson.....1842-52
William W. King.....1852-52
William M. Randolph.....1852-57
Abner N. Ogden.....1857-65
S. F. Glenn.....1865-67
Jacob Hawkins 1867-73
Charles Gayarré 1873-76
Percy Roberts 1877-79
Henry Denis 1880-95
Walter H. Rogers.....1895-1902
Thomas H. Thorpe.....1902-07
Charles G. Gill.....1907-

THE CLERKS.

At New Orleans.

R. F. Hamilton.....March 1, 1813
Chas. Derbigny.....June 7, 1814
N. N. Le Breton.....November 27, 1820
A. Cuvillier.....December 11, 1837
Charles Durocher.....July 1, 1843
Eugene Lasere .....November 26, 1845
J. Madison Wells, Jr.....April 3, 1865
John M. Howell.....January 9, 1872
Alfred Roman.....January 9, 1877
George W. Dupré.....April 5, 1880
Joseph F. Poché.....February 1, 1889
Thomas McC. Hyman..January 19, 1891
Paul E. Mortimer.....June 30, 1909

At Monroe.

Henry M. Bry.....June 26, 1846
Robert Taylor .....March 27, 1850
Franklin Garret .....July 9, 1866
W. H. Dinkgrove .....July 12, 1869
John H. Dinkgrove.....July 7, 1873
Talbot Stillman.....July 2, 1877
Robert J. Wilson.....June 7, 1880

At Opelousas.

Pierre Labiche.....June 26, 1846
(The Court House and Records burned in 1886)
Benamin R. Rogers.....
L. S. Taylor .....
B. F. Mequiley.....July 2, 1888

At Alexandria.

William Wilson.....August 2, 1813
M. A. Airail.....June 26, 1846
Duncan C. Goodwin.....Sept. 17, 1850

At Shreveport.

S. M. Morrison.....October 11, 1880
P. J. Trezevant.....October 13, 1884
William G. Boney.....October 22, 1887
William P. Ford....September 20, 1890
H. H. Hargrove.....October 9, 1893

Note: The above lists were prepared as follows: Attorneys General and Reporters by William Kernan Dart, of the New Orleans bar; Clerks, by John A. Klotz, deputy clerk of the Supreme Court.

THE JUSTICES OF THE SUPREME COURT.

By William Kernan Dart, of the New Orleans Bar.

This list of the Justices of the Supreme Court is arranged chronologically in the order of appointment. In those cases where biographical data is accessible, such information is given. The list includes the name of every justice, including the members of the Superior Court of the Territory of Orleans. The brackets after the names indicate the term of service. The compiler has gathered this work from scattered directions, and in several cases has succeeded in obtaining only fragmentary information owing to the chaotic condition of sources.

Ephraim Kirby, (1804-04) : Born Litchfield, Conn., February 23, 1757; died at Ft. Stoddard, Miss., October 2, 1804. Kirby served through the Revolutionary War, and was left for dead on the field at Germantown. He was graduated from Yale. Served in Connecticut Legislature, 1791-1804, and as United States Supervisor of Revenues, 1801. He published the first volume of legal reports in the United States, those of Connecticut, in 1789. He was several times a candidate for Governor of Connecticut. Upon the acquisition of Louisiana, Jefferson appointed him a judge of the Territorial Court of Orleans, and while en route to take his office he died at Ft. Stoddard, Miss.

John B. Prévost (March, 1804-November, 1808) : Born in 1770 in the West Indies, the son of a British officer. His mother moved to New York, and in 1782 married Aaron Burr. In 1804 Prévost was a recorder in New York City. Jefferson commissioned him a judge of the new Territorial Court. Arriving in New Orleans October 29, 1804, he opened the Superior Court with a charge to the grand jury on Monday, November 5, 1804. He tried the famous Garcia and Bollman Cases. After his retirement from the bench he practiced law for many years in New Orleans. In 1822 he was United States agent to investigate the rights of the rebels in the Spanish colonies. He died between 1830 and 1840.

William Sprigg (January 17, 1806-November, 1808) : Was a member of Congress from Maryland, 1801-02. In the latter year he moved to Ohio, and in 1806 to Orleans.

George Matthews, Jr. (or Mathews) (January 19, 1806-November 14, 1836) : Born Staunton, Va., September 21, 1774; died Bayou Sara, La., November 14, 1836. His father was the Gov-

ernor of Georgia who signed the famous Yazoo fund bill, and was a Revolutionary veteran. He (the judge) removed to Georgia in 1785, and was admitted to the bar in 1799. Appointed by Jefferson a judge of the Superior Court of Mississippi in 1805, and in the following year was transferred to Orleans. In 1813 he became presiding judge of the court, and remained such until his death. He learned the civil law after ascending the bench. He left a very large fortune at his death, and his will was successfully attacked; one of its dispositions being annulled by the Supreme Court.

Joshua Lewis (November 10, 1806-March 1, 1813): Born Jessamine county, Va., June 5, 1773, died at New Orleans, 1833. Emigrated to Kentucky and was a political advisor of Henry Clay. Was one of the three commissioners whom Jefferson appointed to take charge of Louisiana. Was a member of the Kentucky Legislature. After his retirement from the Superior Court bench, he became judge of the Fourth District Court, which position he held from 1813 to his death. Defeated for Governor of Louisiana in 1816 by Jacques Villeré. Was a lieutenant at the Battle of New Orleans, although he occupied a judicial position. Left a large family.

John Thompson (November 14, 1808-February, 1810): Died in New Orleans in 1810, and was succeeded by F.-X. Martin.

François-Xavier Martin (March 21, 1810-March 1, 1813; February 1, 1815-March 19, 1846): Born Marseilles, France, March 17, 1764; died New Orleans, December 11, 1846. At 18 he emigrated to Martinique, and from there he went in 1786 to New Bern, N. C. Learned English by typesetting as a printer. Printed a number of books, and a daily paper in North Carolina. He was admitted to the bar in 1789. Issued a digest of North Carolina cases and laws, and translated Pothier on Obligations. Author of History of North Carolina (1806-07), Martin's Louisiana Digest, Martin's History of Louisiana. Was a member of the North Carolina Legislature. Appointed in 1809 a judge of the Mississippi territory, and in 1810 was transferred to Orleans. From February, 1813, to January, 1815, was Attorney General of Louisiana, and was reappointed to the bench that year. Left a large estate; his will was unsuccessfully attacked on the grounds of fraud. He was a brilliant and learned judge. His latter years on the bench were marred by total blindness, and certain disagreeable personal eccentricities.

Dominick Augustin Hall (March 1, 1813-July 1, 1813): Born South Carolina, 1765; died in New Orleans, December 12, 1820. Practiced law in Charleston. U. S. District Judge, Orleans, 1803-12. Resigned to become state judge, and four months later reappointed federal district judge. As such he fined General Andrew Jackson $1,000 for contempt of court during the Battle of New Orleans. This fine was repaid with interest by Congress in 1844.

Pierre Auguste Charles Bourisgay Derbigny (March 1, 1813-December 15, 1820): Born in Laon, Lille, Department du Nord, France, 1767; died Gretna, La., October 6, 1829. He was descended from a French noble family which was compelled to migrate in 1793. He first went to St. Domingo, and thence to Pittsburg, Pa. At the latter place he married the sister of the French Governor, and then moved in succession to Missouri, Florida, and Louisiana. In 1803 he was private secretary to Etienne Boré, mayor of New Orleans; in the same year Governor Claiborne appointed him official interpreter of languages for the territory. He delivered the first Fourth of July oration in the territory in 1804. Clerk of court of common pleas, 1804; secretary of legislative counsel, same year. Member of first Louisiana House of Representatives, 1812, but resigned to become judge. His nomination was first rejected by the Senate, but was afterwards returned and confirmed at the Senate's request. He retired from the bench to run for Govrnor, and was defeated by T. B. Robertson. Secretary of State of Louisiana, 1820-27. Appointed with Livingston and Moreau to revise the Civil Code in 1820. In 1828 he was elected Governor, and was killed by being thrown from his carriage against a tree the following year. He was a prime factor in obtaining the admission of Louisiana. He also ran the first ferry across the Mississippi at New Orleans.

Alexander Porter, Jr. (January 2, 1821-December 16, 1833): Born Armagh county, Tyrone, Ireland, 1786; died Attakapas, La., January 13, 1844. His father, a Presbyterian clergyman, was executed in Ireland as an English spy in 1798, and the orphan thereupon came to America with his uncle in 1801. He settled at Nashville, and on the advice of Andrew Jackson moved to Louisiana. Admitted to the bar in 1807. Member of the Constitutional Convention of 1812. Elected to United States Senate, 1833, serving until 1837. Voted as a senator to censure Jackson for

removing deposits, and favored Texan Independence. Again elected United States Senator in 1843, and died in office.

Henry Adams Bullard (February 4, 1834-February 1, 1839; January 1, 1840-March 19, 1846): Born Groton, Mass., September 9, 1788; died New Orleans, April 17, 1851. He was graduated from Harvard in 1807. Shortly thereafter he joined General Toledo to start a revolution in Mexico, and spent the winter of 1812 as his aide at Nashville. In the spring of 1813, he went to New Mexico, and was defeated by the royal troops in a pitched battle at San Antonio. After severe hardships he reached Natchitoches, and started to practice law. In 1822 he was elected to the district bench, and to Congress in 1833, from which he retired to become Justice. Became Secretary of State of Louisiana in 1839, and the following year returned to the bench. In 1847 he became Professor of Civil Law at the University of Louisiana. Served a term in the Legislature, and a few weeks later was re-elected to Congress. After one year of Congress, he fell ill because of the hardships of the return journey, and died. He was the first president of the Louisiana Historical Association.

Henry Carleton (April 1, 1837-February 1, 1839): Born in Virginia about 1785; died at Philadelphia, March 28, 1863. His family name was originally Coxe. He was graduated from Yale in 1806; he moved to Mississippi, and then to New Orleans in 1814. He served at the Battle of New Orleans as a lieutenant of infantry under Jackson. With Moreau-Lislet he published a translation of the Partidas. He was United States district attorney in 1832, and then became Justice. He resigned from the bench because of ill health, traveled about Europe, and on his return settled in Philadelphia, where he devoted himself to biblical, metaphysical, and philosophical studies. Published Liberty and Necessity (1857), and an Essay on Will (1863). Adhered to the Union during the war.

Pierre Adolphe Rost (March 4, 1839-June 30, 1839; March 19, 1846-May 4, 1853): Born in Garonne, France, 1797; died at New Orleans, September 6, 1868. Took part in the defense of Paris, 1814, and then became a member of Napoleon's army. Emigrated in 1816 to America, landing at Natchez, Miss. Subsequently removed to Louisiana. State Legislature, 1822. Selected the name for Lafayette parish when it was created. Defeated for Congress. Appointed to the supreme bench in 1839, and served

a few months. Again appointed under the Constitution of 1845. During the Civil War was a Confederate Commissioner to Spain.

George Eustis (March 4, 1839-May 30, 1839; December 1, 1839; March 19, 1846-May 4, 1853): First Chief Justice. Born Boston, Mass., October 20, 1796; died New Orleans, December 22, 1858. Was graduated from Harvard, 1815. Served as private secretary to Governor William Eustis, who was then Minister to The Hague. Studied law there, and moved to New Orleans in 1817. Admitted to the bar in 1822. Served several terms in Legislature. Secretary of State, Commissioner of the Board of Currency. Attorney General of Louisiana, member of the Convention of 1845. Became first Chief Justice of Louisiana under the Convention of 1845. Had previously been Associate Justice, and had declined a reappointment as such in December, 1839. LL. D., Harvard.

George Strawbridge (August 31, 1839-December 1, 1839): A native of Maryland. After he retired from the supreme bench, he became judge of the Fourth District Court, serving 1846-53. Ran for Associate Justice in 1853, but was defeated for election.

Alonzo Morphy (August 31, 1839-March 19, 1846): Born Charleston, S. C.; died New Orleans, 1856. Moved to Louisiana, and studied law under Livingston. Member of Legislature, and Attorney General of the state. He was the father of Paul Morphy, chess player.

Edward Simon (January 1, 1840-March 19, 1846): Born May 26, 1799, Tournay, Haynaut, Belgium. Studied at University of Louvain, and studied civil law at Brussels. Emigrated to London in 1817, and from there to Baltimore, where he went into the cotton business. Moved to Louisiana, settling at St. Martinsville. After retirement from bench, became a sugar planter. Died between 1860 and 1870.

Rice Garland (January 1, 1840-March 19, 1846): A native of Virginia. Member of Congress, 1834-40. Died about 1861 in Texas.

George Rogers King (March 19, 1846-March 1, 1850): Born in St. Landry parish, La., 1807; died there March 21, 1871. Was graduated from University of Virginia. Served successively as state legislator, district attorney, district judge, and Associate Justice.

Thomas Slidell (March 19, 1846-May 4, 1853; May 4, 1853-July, 1855): Second Chief Justice. Born in New York. 1805, died there 1860. Educated at Yale, and in Spain. Wrote a Year in Spain, and author of A Digest of Supreme Court Decisions, with J. P. Benjamin. Was elected Chief Justice, his opponent being Christian Roselius, under the Constitution of 1852, and at the election was assaulted by a ruffian. This assault affected his brain, and caused his retirement from the bench.

Isaac Trimble Preston (March 1, 1850-July 5, 1852): Born Rockbridge county, Va., 1793; died on Lake Pontchartrain, La., July 5, 1852. Was graduated from Yale in 1812, and was captain of a volunteer company during the War of 1812. Studied law under William Wirt. Member of the Constitutional Convention of 1845. Was killed by a steamboat disaster while returning from a pleasure trip.

William Dunbar (September 1, 1852-May 4, 1853): Served in Congress from 1853 to 1855.

Cornelius Voorhies (May 4, 1853-April, 1859): Of Dutch descent. Born Avoyelles parish, 1803. Died, 1859. District Attorney, State Senator, District Judge, and Supreme Court Justice. His son succeeded him on the bench.

Alexander M. Buchanan (May 4, 1853-1862): Judge of the Fourth District Court before his ascension to the bench.

Abner Nash Ogden (May 4, 1853-July,1855): Declined a seat on the federal bench at one time.

James G. Campbell (May 4, 1853-1855).

Henry Martyn Spofford (1854-November 1, 1858): Born Germanton, N. H., September 8, 1821; died Red Sulphur Springs, W. Va., August 20, 1880. Was graduated from Amherst in 1840 at the head of his class. Admitted to bar at Monroe, La., 1846, and practiced at Shreveport, La. District Judge, 1852-54. Resigned from Supreme Court in 1858. After the war was in partnership with John A. Campbell, Ex Justice of the United States Supreme Court. Elected to the United States Senate in 1877, but the Senate seated his opponent. LL. D., Amherst, 1877. Co-author of Louisiana Magistrate.

James Neilson Lea (July, 1855-1858): Born at Baton Rouge, La., November 26, 1815; died at Lexington, Va., October 29, 1884. Was graduated from Yale in 1834. Judge of Second District

Court, 1849-55. After war became Professon of Civil Law at Washington and Lee College.

Edwin Thomas Merrick (July, 1885-April 3, 1865): Third Chief Justice. Born in Massachusetts, 1810; died in New Orleans, 1897. Moved to Ohio, and then to Clinton, La., where he was a District Judge until elected Chief Justice. He was noted for his erudition.

James L. Cole (April 6, 1857-March 12, 1860; 1863-65): When the Federals attempted to reorganize the Judiciary he was appointed to his former position, but the court never as a fact organized.

Thomas Thompson Land (November 1, 1858-April 3, 1865): Born Rutherford county, Va., December 17, 1815; died Shreveport, La., June 27, 1893. With his parents he moved first to Alabama, and then to Mississippi. Was graduated from the University of Virginia. A member of the Mississippi Legislature in 1839. Moved to Shreveport in 1846. Judge of the District Court, 1854-58. Member of the Convention of 1879, where he was chairman of the judiciary committee. He was the father of Justice Alfred D. Land.

Albert Voorhies (April 1859-April 1865): Born St. Francisville, La., 1829; died New Orleans, January, 1913. Son of Judge Cornelius Voorhies. After the war he became Lieutenant Governor of Louisiana, 1865-68, and subsequently served as a District Judge in New Orleans.

Albert Duffel (March 12, 1860-April, 1862).

Pierre Emile Bonford (1863-August 17, 1864): Appointed by the Confederate State Government, and served until his death at Alexandria, La., Aug. 17, 1864.

Thomas Courtland Manning (1864-65;January 9, 1877-April 5, 1880; December 1, 1882-April 19, 1886): Sixth Chief Justice. Born at Edenton, N. C., 1831; died New York City, October 11, 1887. Was graduated from the University of North Carolina. Removed to Alexandria, La., 1855. Member of Secession Convention of 1861. Served in the war as a Lieutenant-Colonel and Brigadier-General of the Confederacy, retiring to succeed Bonford as Justice in 1864. He declined Democratic nominations for Governor in 1872, and for presidential elector. He was a vice-president of the Tilden nominating convention. In 1880, he was Democratic presidential elector, and in the same year was ap-

pointed United States Senator, but was not admitted. He was named Chief Justice when the Democrats regained control of the state government. In 1882 he was appointed Associate Justice. From 1886 until he died he was United States Minister to Mexico.

Charles A. Peabody (1863-65): Provisional Judge of Louisiana during the war. He was commissioned Chief Justice of Louisiana by the Federal State Government, and drew a salary, but never heard a case.

John S. Whittaker (1863-65): He was commissioned an Associate Justice by the Federal State Government, but never served. He was born in Massachusetts, March 8, 1817, and died about 1897. He served as Criminal District Judge of New Orleans during the latter part of the war period.

William B. Hyman (April 3, 1865-November 1, 1868): Fourth Chief Justice. Born, Marion county, N. C., 1814; died in 1884. Moved to Alexandria, La., about 1840. Parish judge, Rapides, 1865--69. After his retirement from the Supreme Bench became parish judge of Jefferson, and later parish surveyor.

Zenon Labauve (April 3, 1865-November 1, 1868): Born in West Baton Rouge, February 16, 1801; died in Iberville parish, 1870. State Senator, 1834-36, 1842-43. Member of Constitutional Convention of 1845. State Senator, 1851. Justice, 1865-68.

John Henry Ilsley (April 3, 1865-November 1, 1868): Born June 22, 1806, London, Eng.; died Donaldsonville, La., May 9, 1880. Was graduated from Oxford University, and emigrated to America when 19. Taught school until admitted to bar. Several sons served in the Confederate Army.

Rufus K. Howell (April 3, 1865-January 9, 1877).

Robert Byron Jones (May 1, 1865-July 1, 1866). Born in Florida, in 1833. Died July 20, 1867, at New Orleans.

James G. Taliaferro (July 1, 1866-November 3, 1876): Born Amherst county, Va., 1798; died Catahoula parish, 1876. Educated Transylvania University, Ky. Member of Secession Convention, 1861, but voted against secession and remained a Union man. Of Italian descent. Moved to Louisiana in 1814. Parish judge, 1840. Member of the Constitutional Conventions of 1852 and 1868.

John T. Ludeling (November 1, 1868-January 9, 1877): Fifth Chief Justice. Born in Monroe, La., 1822. Died January, 1890.

William Gillespie Wyly (November 1, 1868-November 3, 1876): Born Greenville, Tenn., February, 1831; died on S. S. St. Louis en route from Liverpool to New York, September 25, 1903. Was graduated from Jefferson College. In 1868 elected a District Judge, but resigned shortly thereafter to become Supreme Court Justice.

William Wirt Howe (November 1, 1868-December 3, 1872): Born Canandaigua, N. Y., November 24, 1833; died at New Orleans, 1911. Was graduated from Hamilton College. Major in United States army during the war. Served one year as president of the American Bar Association. Published Studies in Civil Law. Judge of Criminal District Court, 1868, which he resigned to become Associate Justice. United States District Attorney, 1905-09.

John H. Kennard (December 3, 1872-February 1, 1873): Died at New Orleans, May 2, 1887. Was appointed to the bench, and unseated after a brief service, being succeeded by Morgan.

Philip Hickey Morgan (February 1, 1873-January 9, 1877): Born Baton Rouge, La., November 9, 1825; died about 1892. District Judge, 1855-61. United States District Attorney, 1866-73. United States Representative on International Tribunal at Egypt, 1881-85. Subsequently United States Minister to Mexico.

John Edwards Leonard (November 3, 1876-January 9, 1877): Born at Chester county, Pa., September 22, 1845; died at Havana, Cuba, March 15, 1878. Was graduated from Harvard and from Heidelberg. Moved to Louisiana, where he became District Attorney, and subsequently Justice. Elected to Congress in 1876.

John Edward King (January 9, 1877-January 9, 1877): Appointed by Governor Packard to succeed Judge Wyly. He served one day only; the court being turned out of office by the Democrats on that day.

Robert Hardin Marr (January 9, 1877-April 5, 1880): Born Clarksville, Tenn., October 29, 1819. Presidential Elector on Bell ticket in 1860. Judge of Criminal District Court. Died in New Orleans, November 18, 1892.

Alcibiade De Blanc (January 9, 1877-April 5, 1880): Member Secession Convention of 1861. Colonel of C. S. A. Died at St. Martinsville, La., November 9, 1883.

William B. G. Egan (January 9, 1877-November, 1878): A native of Virginia. Died at New Orleans, November 1878.

William B. Spencer (January 9, 1877-April 5, 1880): Born Catahoula parish, La., February 5, 1835; died at Cordova, Mexico, April 29, 1882. Member of Congress, May 31, 1876-January 8, 1877.

Edward Douglass White (January 1879-April 5, 1880): Born Lafourche parish, La., November 3, 1845. Was graduated from Georgetown (D. C.). Served in Confederate Army. State Senator, 1874. United States Senator, 1891-94. Associate Justice United States Supreme Court, February 19, 1894-December 12, 1910. Since the latter date he has been Chief Justice of the United States.

Edward Bermudez (April 5, 1880-April 5, 1892): Seventh Chief Justice. Born New Orleans, January 19, 1832; died there August 22, 1892. Member Secession Convention of 1861. Served in Confederate Army. Assistant City Attorney, 1866.

Felix Pierre Poché (April 5, 1880-April 5, 1890): Born St. James parish, May, 18, 1836; died at New Orleans, June 21, 1895. Served in Confederate Army. State Senator, 1866.

Robert Burr Todd (April 5, 1880-June 11, 1888): Died at Brooklyn, N. Y., February 4, 1901.

William Mallary Levy (April 5, 1880-November 5, 1882): Born Isle of Wight county, Va., October 30, 1827; died Saratoga, N. Y., November 5, 1882. Served in Mexican War, and in Confederate Army. State Representative, 1859-61; Democratic Presidential Elector, 1860. Congressman, 1875-77.

Charles Erasmus Fenner (April 5, 1880-September 1, 1893): Born at Jackson, Tenn., February 14, 1834; died at New Orleans, October 24, 1911. Served in Confederate Army. President of Tulane Educational Fund, and of Boston Club. Noted as orator.

Lynn Boyd Watkins (April 19, 1886-March 2, 1901): Born Caldwell county, Ky., October 9, 1836; died at New Orleans, March 2, 1901. Served in Confederate Army. District Judge, 1871.

Samuel Douglas McEnery (June 11, 1888-March 4, 1897): Born Monroe, La., May 28, 1837; died at New Orleans, June 28, 1910. Was graduated from the Naval Academy, and the University of Virginia. Served in Confederate Army. Lieutenant Governor of Louisiana, 1879-81; Governor, 1881-88. Defeated for Governor in 1892. Elected United States Senator in 1897, and served till he died.

Joseph A. Breaux (April 5, 1890-April 4, 1904; April 4, 1904-April 3, 1914): Ninth Chief Justice. Born February 18, 1838. Served in Confederate Army. Served as Associate Justice from 1890 to 1904, when he became Chief Justice. Compiler of Breaux's Digest.

Francis Tillou Nicholls (April 5, 1892-April 4, 1904; April 4, 1904-March 18, 1911): Born Donaldsonville, La., 1834; died there January 4, 1912. Was graduated from West Point in 1855, served one year in regular army. Lost an eye, foot, and arm in Civil War, becoming a Major General of Confederate Army. Governor of Louisana, 1876-79, overthrowing Republican rule. Again Governor, 1888-92, overthrowing lottery. Chief Justice, 1892-1904, when he became Associate Justice. Retired on a pension in 1911, being the first judge in Louisiana to retire on a pension.

Charles Parlange (September 1, 1893-January 1, 1894): Born Pointe Coupee, La., 1852; died, New Orleans, February 5, 1907. Member Constitutional Convention of 1879. State Senator, United States District Attorney, Lieutenant Governor. Retired from Supreme Court to become Federal District Judge, a position he occupied until his death.

Henry Carleton Miller (February 1, 1894-March 4, 1899): Born Covington, La., February 1, 1828; died at New Orleans, March 4, 1899. United States District Attorney, 1856-61; C. S. A. District Attorney, 1861-65. Dean of Tulane Law School.

Newton Crain Blanchard (March 4, 1897-October 17, 1903): Born Rapides parish, January 29, 1849. Was graduated from Louisiana State University. Member Constitutional Convention of 1879. Congressman, 1881-93; United States Senator, 1893-97. Governor, 1904-08. Now practicing law at Shreveport.

Frank Adair Monroe (March 22, 1899——): Born at Annapolis, Md., August 30, 1844. Served in Confederate Army. Served a month as Judge of Third District Court in 1872, when he was dispossessed. Served in White League. Re-elected Judge, 1876. Judge Civil District Court, 1880-99. Member Constitutional Convention of 1898. Will succeed Judge Breaux as Chief Justice in April, 1914.

Olivier O. Provosty (March 16, 1901——): Born Pointe Coupee, La., August 2, 1852. Educated at Georgetown University. District Attorney, 1873-76. Louisiana State Senate, 1888-92.

Member of Constitutional Convention, 1898. Referee in bankruptcy, 1898-1901.

Alfred Dillingham Land (October 17, 1903——): Born Holmes county, Miss., January 15, 1842. Son of Justice T. T. Land. Served in Confederate Army. District Judge, 1894-1903.

Walter Byers Sommerville (March 18, 1911——): Born October 7, 1854, at New Orleans, La. Prior to his present elevation he was Assistant City Attorney, and Judge of the Civil District Court.

Luther Egbert Hall (April 5, 1912-April 5, 1912): was elected Justice, but, having been elected Governor of Louisiana, never took his seat. Judge Land was subsequently re-elected to fill this vacancy.

Charles A. O'Niell (April 4, 1914——): Has been elected to the vacancy created by Justice Breaux's retirement, and will take his seat on the above date.

INVITATION

1813 1913

The Centenary
of the
Supreme Court of Louisiana.
The Chief Justice
and the Associate Justices of the
Supreme Court of Louisiana
invite you to participate in the celebration of the
One Hundredth Anniversary of the Organization of
The Supreme Court of Louisiana
to be held in the Court Room
Saturday morning, March the first,
nineteen hundred and thirteen,
at eleven o'clock,
New Orleans, Louisiana.

YE OLDEN TYME

(From Grace King's Scrap Book)

The records on file at the Custom House pertaining to the purchase of Louisiana by this government disclose a decidedly unsatisfactory and unencouraging condition of affairs in the new territory during the period from 1803 to 1805. The situation was abnormal and feverish. Smuggling was general, "fraud was fashionable," the customs regulations were more honored in the breach than in the observance, and a feeling of discontent among the natives was everywhere prevalent. All this, however, was known to the United States government; and in order to more effectually counteract these evil tendencies President Jefferson instituted a policy of conciliation to be applied exclusively to the newly purchased territory of Louisiana and its people.

The hundreds of letters written by Albert Gallatin to Hare Browse Trist, then collector of the port of New Orleans, were unremitting in their recommendations of a line of conduct having for its purpose the propitiation and pacification of the disaffected natives. This rule extended to all persons coming into contact or having any dealings whatever with the Federal government in Louisiana. The good results of this policy were not apparent until the latter part of Mr. Jefferson's first term of office, when conditions began to be normal and the laws were being enforced—not rigidly, but with a liberality of construction that made them acceptable to the better classes, especially the business element. For the largeness of spirit with which the affairs of the national government were administered in Louisiana the letters of Mr. Gallatin are profuse in their compliments to the collector of the port, Mr. Trist, whose authority at that time extended over such a vast area of new country.

Hare Browse Trist was the son of Nicholas Trist, a lieutenant in the Royal Irish Regiment. Lieut. Trist married Elizabeth House of Philadelphia, and H. B. Trist, the first collector of the port of New Orleans after the purchase of Louisiana by the United States government, was the only son of this marriage. He was born in Philadelphia, February 22, 1775. At the time of the purchase of Louisiana Mr. Trist was United States collector of customs at Port Gibson, Miss., and when the sale of the new territory was effected he was transferred to New Orleans. He died of yellow fever within a year of the expiration of his term of office, but only after he had practi-

cally completed the great work intrusted to him of pacifying and establishing law and order in Louisiana. His direct descendants are N. B. Trist, the well-known notary in this city; N. P. Trist, and Mrs. R. C. Woods, grandchildren of H. B. Trist. H. B. Trist had two sons, the elder of whom, Nicholas, made the treaty of peace with Mexico. The Trist family, who originally came from Devonshire, England, are connected by marriage with the family of Thomas Jefferson.

An interesting feature of the letter of Mr. Gallatin given below is its reference to the "Fourche," a stream which we know today as the "Lafourche." Col. Lewis Guion, speaking of this stream yesterday, said that the Lafourche empties into the Gulf of Mexico at two different points, and it is from this fact that it derives its name, meaning two-forked. Col. Guion had always understood that in the early history of Louisiana levees were unnecessary along the banks of the bayou, and that it was navigable for many miles for the largest sailing vessels. Now, however, the mouth of the bayou has become shoal and there are periods of the year when very few, if any, boats can enter.

The letter given below was written April 9, 1804, by Treasurer Gallatin, to Mr. Trist, the collector of the port of New Orleans.

"Hare Browse Trist:

"Dear Sir:—You will herein receive a newspaper containing an act for imposing more specific duties after the 30th day of June next. A section has been introduced in that law for the purpose of remedying any inconvenience which might arise at New Orleans in revenue cases from the want of a District Court, and of relieving merchants and others there from any delays in the remission of fines, forfeitures and penalties incurred on account of more deviations from forms. On that subject the statute speaks for itself. It is the duty of the Secretary of the Treasury, under the act, to provide for investigating or remitting the forfeitures, penalties and disabilities occurring in certain cases therein mentioned, passed 3rd March, 1797, and rendered perpetual by a subsequent law, to mitigate or remit the penalty or remove the disability, if the same shall have been incurred without willful negligence or intention of fraud. This is the power which is now transferred for a limited time to the Governor, and will undoubtedly be exercised by him in such wise and discreet manner as at the same time to reconcile, by softening the rigid provisions of our revenue laws, the inhabitants of Louisiana to their

operation and to protect the revenue against any intentional fraud. As the Governor, for the time being, exercises also the power of the intendant, the process will be very simple, and he may, after having received our statement and objections, decide at once on petitions and communicate the result to you. It is proper to add that this power to remit forfeitures, penalties, and to remove disabilities, must strictly be confined to forfeitures, penalties and disabilities; that it never extends to the allowance of drawbacks when, by any deviations from the provisions of the law, or by any omission of the party, they cannot legally be granted, nor to the remission of duties legally incurred, except in the case where foreign duties may have been incurred by reason of a register being forfeited through some want of form, and the disability thence accruing is removed by the Secretary of the Treasury, or, in this case by the Governor of Louisiana. Observe, however, that in cases where, under the registering act, a new register cannot be granted, no power exists, under the mitigation act, to restore the vessel to the privileges of a vessel of the United States. A case has been stated in which it will be particularly proper to remit the forfeitures: The importation of spirits, beer and loaf sugar in vessels of less contents than those prescribed by law; so long, at least, as it may be presumed that the importers could not have had notice of the law.

"I wish to be informed whether any vessel can, from the sea, ascend the 'Fourche,' or any other outlet of the Mississippi. If so, an inspector, until a surveyor shall be appointed, should be located at the said place, or such outlet. I am led to that inquiry from observing in a report of Dr. Watkins to Gov. Claiborne that a vessel with French stores of a suspicious appearance had some time ago, entered the Mississippi through that 'Fourche.' If it shall be necessary to have a boat there you may supply one, and I would recommend that whenever barges and boats shall be employed the person having the direction be instructed to report to you the soundings, both at low and high water, so as to collect precise information of the depth of water which vessels may, at drouth seasons, carry up those several outlets of the Mississippi. Congress having authorized the building of a lighthouse at the mouth of the Mississippi, I will write you by next mail particularly on that subject, and mention it now in order that you may, in the meantime, collect and communicate such information as relates to that object.

" I have the honor to be, very respectfully, sir, your obedient servant.

"ALBERT GALLATIN."

REMEMBRANCES OF NEW ORLEANS AND THE OLD ST. LOUIS HOTEL

From the Scrapbook of Miss Grace King

The veteran Colonel Cuthbert Bullitt, who loves Louisville and New Orleans, and who lives in both cities in their best seasons, and who has written much entertaining matter of the two cities, is again in New Orleans to spend the winter, looking as hale and hearty as a man of his years could be expected to look. Colonel Bullitt hands the Picayune the following note for publication:

Once more I am in New Orleans, not on my "native heath," but in the renowned Hotel Royal, which has its history, and as there are few men living able to tell of it, I will endeavor to do so, and as briefly as I can.

Many years ago, before the late infernal war, when cotton was king, at high prices, and our golden coast along the shores of the big Mississippi was redolent with the sweet odor of sugar-making, everybody during the happy season had sugar on the brain, or cane juice in their mouths. Everybody seemed happy, with plenty of money, when the "ancient regime," the Creoles of Louisiana, reigned supreme in society, and having abundance of wealth, they determined to build a colossal hotel, that would eclipse all others in America, and at the same time remind them of the palaces and hotels of their faraway homes in "La Belle France!"

With these ideas they built the St. Louis Hotel, with its wonderful dome, on a small scale, equal to that grand one at our capital, at Washington.

Here is art in all its grandeur, done by the world's great artist, Canova, who came here for the express purpose. He has displayed his genius on its walls, with gods and goddesses standing out in the respective panels, in bold relief, and where old Neptune, with his water nymphs, have a good time generally, and of a hot day I feel like taking a hand with them.

Fifty years have passed by since this great hotel was erected. When the solons of the state were anxious to have a statehouse worthy of Louisiana, they purchased it, and now own it.

In occupying it they deprived it of some of its grandeur by flooring over the second-story for the hall of representatives.

Like all solons they sometimes make mistakes, and they concluded to abandon this noble structure and try Baton Rouge, from whence now fulminates the law, which ought to govern the State. Fortunately, they could not remove this glorious building, and representative of the old Creole population in whose midst it stands, a memorial of the best people that once held possession of all that was good.

The old St. Louis has gone, in all its glory, with its busy crowd of merchants and planters. The great auctions of land, horses, and negroes are heard no more, and in its place stands the great Hotel Royal, under the charge of Colonel Rivers, one of the best-known caterers in the country, where social luxury is served with a liberal hand, worthy of the good old days of Creoleism, accompanied by an abundance of substantial good things.

The beautiful rotunda, the repose of art, is now used as a "saller a mange," or dining-room, where several hundred persons can be seated, and at night the brilliant lights from a huge chandelier, with its hundreds of illuminating globes, make a scene worthy of the Arabian nights, where women are seen in all their splendor from the reflection from the great glasses, which adorn the walls in all directions, enabling every one to see each other without moving from their seats, and so a little of the gaudy glory of the old house is left for appreciating visitors.

CUTHBERT BULLITT.

INTERESTING FOSSILS

From the Scrapbook of Miss Grace King.

Correspondence of The Times-Democrat.
Colfax, La., Aug. 5, 1896.

The researches and accounts of the Llarto mounds have aroused some curiosity among those who take an interest in such matters. But more interesting and far richer fields invite the attention of the student of geology. I allude in particular to the stretch of blue bank on Red River lying twenty miles above here and just below Montgomery. There is a bank of a half mile in extent which is a rich find to the geologist. There is found in profusion sea shells, bones of salt water fishes, shark teeth, and other curios. I once found there a section from the jaw of a shark; the teeth more than an inch and a half in length and the edges serrated similar to some of the extinct specimens named in geology by Lyell. Several years ago the State geologist here exhumed the fossil remains of an extinct specimen of the whale. But by far the greatest find is now in the office of Dr. M. A. Dunn, of this place.

In 1895 Dr. Dunn found exposed in the sides of this blue bank the remains of an animal; the erosion and crumbling of bank had exposed it. The doctor went after suitable tools to exhume it. On his return the irrepressible fifteen-year-old boy was there and had damaged the find considerably, but enough is recovered to identify the animal as the pterodactylus, which became extinct about the end of the palaezoic age; accurately described in Dr. Buckland's "Bridgewater Treatise." This horrible creature could fly, walk or swim. The orbital space (eight inches) indicates him to be a nocturnal animal also. The bones are of a density and hardness unknown in any of our living species. His gigantic flippers were armed with hooks, and on the end of the flipper was another hook or hand terribly armed. His jaws cut past each other like scissors, and were armed with a horrible set of teeth, those in our specimen being as large as the largest sharks. The size of the teeth and bones would conflict with some of the ideas of modern geologists. Having seen no restored specimen to accurately judge by, I could only say that

any approach to symmetry would indicate an animal of tremendous proportions, with bones like steel and armed with hooks and flippers, and could fly in the air, climb precipices, hop on the ground, and dive and plunge in the water. Such an animal would seem like some horrible apparition, enough to vanquish a regiment of soldiers. Probably further research would reveal wonderful things. Ages ago, before the upheaval, here sported on this vast sea antediluvian and prehistoric monsters. There are many such banks exposed where the surf roared and the incoming tide deposited these animals. I will incidentally mention that Dr. Dunn has a copy of Lyell's Geology, now a very rare book and out of print.

J. E. DUNN.

THE LAST CAPTURED SLAVER

From Miss King's Scrapbook.

Cleveland Leader: The only captain of a slave vessel who suffered the death penalty in America was captured by a crew of which one of the members is now a citizen of Cleveland, the engineer of the People's Gaslight and Coke Company.

"The slave ship was the Erie, and it was the last American slaver captured," said Mr. Matthews, in talking about the historical event. "She was taken off the mouth of the Congo in the spring of 1861 by the United States sloop of war Mohican. I was captain of the foretop and of the starboard watch. The capture was accidental; the vessels dealing in slaves would slip out at intervals between the patrol beats of the men-of-war, and they knew pretty well our habits. But this time the Mohican was delayed two days in waiting for mail, and going from the island of Fernandizo we sighted a vessel making from the mouth of the Congo. We were flying a French flag. We signaled her to heave to, but this request not being regarded, a shot was fired. Then she hove to without offering resistance, and a party being sent aboard found every one dressed alike. It was thus some days before we discovered who was the captain. She was manned by fifteen men, and had on board 890 slaves and three slave agents. The agents and five Spaniards, who did not wish to claim American citizenship, were sent away in a trade boat. Eight of the slaver's crew were shipped on the Mohican, and the officers and two of the crew were brought to America. The slave ship was taken to Liberia.

"The captain of the slaver was Nathaniel Gordon, and a year after his capture he was swung on Bedlow's Island, where the statue of Liberty now stands. The first mate was sentenced to ten years' imprisonment, the second mate received a five years' sentence, and the two men were each given a year.

"The severe dealings with the officers were due to the intense feeling on the slavery question, as the war had just broken out. The second mate and the two men volunteered to enter the army and were allowed to go free. Our lieutenant, Dunnington, went into the Confederate navy, after bringing Gordon back.

"About three months before the experience with the Erie, a slaver escaped us by being disguised as a whaler. The simulation was very perfect, and on the decks we could see even the boiling vats. The captain showed papers which disarmed suspicion, and when the 'whaler' put up for the night at the mouth of the Congo our captain informed him that next morning he would come around on a visit.

"In the morning he was gone, having taken 1300 slaves aboard. We sighted a vessel in the distance, which we pursued, and found to be an English man-of-war, also trying to catch the 'whaler'."

LOUISIANA LAND TITLES DERIVED FROM INDIAN TRIBES.

By Henry P. Dart.

Primarily all titles to land in Louisiana are derived from the Sovereign, that is, France, Spain and the United States, but the title of the Indians to the land actually occupied by them was always recognized by the French and Spanish governors and special rules were established to protect and to regulate sales of such land by the Indians.

The document printed herewith is an unusually interesting study of these rules and methods, and it also perpetuates the testimony of several surveyors and officials of that period. It is possible that the same information may be found in official publications but it is gathered here in compact shape and will undoubtedly appeal to a large circle of readers.

As will be seen from the text it is a copy of a report made in April 1815 by the Board of Commissioners appointed by the United States to ascertain and to adjust titles and claims to land in the Western District of the Territory of Orleans. Its present value is purely historical and we are glad of the opportunity to print this document, which comes from the private collection of Mrs. H. H. Cruzat.

CLAIMS

Reported by Commissioners.

Opelousas Claims. No. 1.

Pierre Arceneaux claims one third part of the land lying between the Coulé d'Aigle and Frederick Mouton's land, being in depth 40 arpents. This land was purchased by the said Pierre from Frederick Mouton, who purchased from an Indian chief of the tribe of Attakapas. The notice of this claim is accompanied by the following documents. 1st: A certified copy of a deed of Sale by Achenoya, chief of the Attakapas tribe of Indians, vested with power by Jacob Letortue, Jr. and Baptiste (as set forth in the said deed of Sale) to Frederick Mouton, for a tract

of land in the quarter called Bayou de Blanc in the County of Opelousas, bounded on one side by other land of the purchaser, and on the other side by the Coulé d'Aigle, with the depth of 40 arpents, for the consideration of 115 dollars; sale passed 29th July, 1802 before Honoré de la Chaise, then acting as Commandant for the Post of Opelousas. 2dly: A Sale by the said Frederick Mouton to the said Pierre Arceneaux, passed the 5th October, 1804 before the said Honoré de la Chaise, then styling himself "Commandant for the United States of America" of the Post of Opelousas, for one third part of the land purchased by the said Mouton from the Indians, to be taken next to the Coulé d'Aigle. No evidence has been adduced in this claim to establish a title by occupancy, it is therefore to be inferred that the claimant relies on the validity of the Indian title and presumes the transfer passed before the Commandant to be good and sufficient. It may not be improper here to inquire whether and how far this case and others similarly circumstanced may be affected by the laws of the United States, restraining the purchasing of the lands of Indians by unauthorized individuals. By an Act of Congress passed the 30th March, 1802 "for regulating trade and intercourse with the Indian tribes and to preserve peace on the Frontiers," it is enacted, that no Grant, Lease, or other conveyance of lands, or any title, or claim thereto from any Indian, or Nation, or tribe of Indians within the boundaries of the United States, shall be of any validity, unless made by treaty or convention made pursuant to the Constitution. And it is made a misdemeanor punishable by fine and imprisonment for any person not employed under the authority of the United States to negotiate any treaty, or convention with Indians, or treat with them for the title, or purchase of any lands held by them (See the 12th Section of the above recited Act.) The provisions of the Statute above quoted, were by an Act of Congress passed the 26th March, 1904, entitled "an Act erecting Louisiana into two territories, and—" extended to the territories, to take effect from and after the first day of October, 1804. Anterior to the said first day of October, an Act passed the 31st October, 1803 entitled "An Act to enable the President of the United States to take possession of the Territories ceded by France to the United States and for the temporary Government thereof," was to remain in force. By the last mentioned Act, neither the right of the Indians to sell, nor of any individual to purchase from them has been interdicted, or restrained. No

doubts therefore can exist of the Indians within the limits of Louisiana having had the same rights to pass Sales of their Lands at any time previous to the first day of October, 1804, that they enjoyed whilst Louisiana continued to be a Colony of Spain. Such Sale however could only vest in a purchaser the kind of title which the Indians held. It therefore becomes necessary next, to examine the nature and tenure of the Indian title to Land in Louisiana. The Spanish functionaries seem to have made a distinction between Indians who had partaken of the rights of Baptism, and the ordinary tribes, or nations of Indians within the limits of Louisiana. The former were denominated "Christian Indians," a term usually if not invariably incorporated in the body of the instrument, by which their titles to lands were transferred to others. These Indians seem to have been considered capable of holding and enjoying lands in as full and ample a manner as any other subjects of the Crown of Spain. That the tenure of the title of Lands held by Indians not denominated Christians, may be more clearly comprehended and that repetition may be avoided in the progress of this report, the undersigned Commissioners think it necessary here to insert such extracts, both from the testimony adduced and written documents filed in other claims held under purchase from Indians as may appear in any degree applicable to the one under consideration, to which they may find it convenient and useful to make frequent references in their remarks on other claims similarly circumstanced. From testimony given in the claim of Thomas Nicholson (which will be reported among the claims in the County of Attakapas) by Lewis C. De Blanc, Esqre. formerly exercising the Office of Commandant Civil and Military for the District of Natchitoches and afterwards the same Office for the District of Attakapas, the following is extracted "The right of the Indians to sell their lands always was recognized and admitted by the Spanish Government." "We always consider the title from the Indians to their villages the best of titles, because the original property of the soil was in them, and when this country was conquered, the laws of the Conquerors were enforced, but the property of the Aborigines was held sacred. Hence the difference between the titles of Indians and other subjects. The other subjects who wanted land must demand and have a written title; it was not necessary for the Indians, because they already held a title to the land they claimed. Their title originated in first occupancy, cul-

tivation and settlement. The Indians never claimed other Lands than their villages, and when they did it was given them by the Government. There never was any instance of the Government of Spain taking land from the Indians, especially their villages. Even when the Indians had abandoned some old villages because their hunting was exhausted, and had established new ones by the Grant of the Spanish Government, their villages deserted were always considered as their property, subject to their disposal and the Inhabitants never suffered to settle there, but where always driven off. There was no time fixed in which a Deed must be presented for approbation. It could be presented in one year, or a hundred years, and it would always receive the Sanction of Government. The laws made it necessary when the Indians sold their lands to have the Deeds presented to the Governor for approbation. This was only a form, as the Governor in all cases approved and never refused. The villages of the Indians never consisted of less than a league and often two leagues, or more in front, and it was the custom of the Spanish Government whenever they granted land to Indians to give them a league, or more square."

In the claim of Miller and Fulton for a tract of land on Bayou Boeuf in the County of Rapides purchased from Indians, which will be reported by the Register and Receiver of this district pursuant to the provisions of an Act of Congress passed the 27th February, 1803, will be seen the testimony of Mr. Charles Laveau Trudeau many years Surveyor General of the Province of Louisiana, under the Spanish Government, from which the following is extracted. "The Deponent knows of no Ordinances or Regulations under any Governor of Louisiana, except O'Riley, by which the Indians inhabiting lands in the Province were limited in their possessions to one league square about their villages, but this regulation has not been adhered to by any of his Successors. The Deponent knows that the custom was, that when a tribe of Indians settled a village by the consent of the Government, that the chief fixed the Boundaries, and where there were one, or more neighboring villages the respective chiefs of those villages agreed upon and fixed the Boundaries between themselves, and when any tribe sold out its village the Commandant uniformly made the conveyance according to the limits pointed out by the chief. The lands claimed by the Indians around their villages, were always considered as their own, and they were always protected in

the unmolested enjoyment of it by the Government against all the World and has always passed from one generation to another, so long as it was possessed by them as their own property. The Indians always sell their land with the consent of the Government, and if, after selling their village and the lands around it, they should by the permission of the Government establish themselves elsewhere, they might again sell, having first obtained the permission of the Government and so on as often as such permission was obtained, and no instance is known where such permission has ever been refused or withheld. These sales were passed before the Commandant of the District and was always considered good and valid without any Order from the Commandant."

In the claim of Miller and Fulton for Land on Bayou Boeuf, the following is an extract from the testimony of Mr. Valentine Laypard late Commandant under the Spanish Government for the Post of Rapides.—"The Deponent has never known a smaller quantity then a league square of land to be assigned to any one Tribe of Indians let their numbers be what they might, and in one case, namely, the Apalachie Tribe (a small tribe) a much larger quantity than a league square of the first quality and situation on Red River was assigned them." (See Rapides Report No. 125)—Extract from the testimony of the same person in the claim of Miller and Fulton for Land on Red River. The Deponent sayeth "that he had been Agent of Indian affairs for many years under the Spanish Government for the Post of Rapides; spoke the Language of the Indians &ca. That in the year 1803 the Apalachie and Tensas tribes of Indians came to the Deponent as Indian Agent, to inform him of their having sold their land to Miller and Fulton and requested him to pass the Sale, that the Deponent replied to the Indians, that neither himself, nor they could dispose of or convey their Lands without the authority and approbation of the Governor of the Province." By referring to the documents filed in the claim, it will be seen that application was made to the Governor, who gave his written permission for the Chief to sell, with the consent of his Nation. See Rapides Report No. 126.

In the Claim of Patrick Morgan and Daniel Clark for a tract of Land in the Attakapas County, which will be reported among other claims of the said County, it will be seen that a Mr. Fuselier de la Clair had purchased from Rinemo, Chief of the Attakapas village called in French "Lamonier" the said Village and

land depending thereon of two leagues in front from North to South, limited on the West by the river Vermillion and on the East by the river Teche. This Sale was passed in November 1760 when Louisiana was subject to France, and being executed before Mr. Kerleric, then Governor of the Province, is evidence, that the consent of the Governor to Sales passed by Indians was at that date considered necessary to their validity. About the same time that the above Sale was passed, three or four other purchases were made from the Indians of Attakapas, by which a very large proportion of the land of that District, and nearly, or quite all of the valuable Lands on the river Teche were embraced. After Louisiana had changed Sovereigns and became a Colony of Spain, the Count de O'Riley, the first Governor of the Province under the Spanish Monarchy, passed Regulations, or Ordinances by whom no Grant for Land in Opelousas, Attakapas, or Natchitoches could exceed one League square. It would seem that in some cases these regulations were intended to have a retrospective operation, for we find that Mr. De la Clair in the year 1770 petitioned the Governor for a Grant of one league front by a league in depth, expressly admitting in his petition that the Sale from the Indians "was not sufficient to assure to him the property of the said land." On this petition the said Governor O'Riley on the 2d March, 1770 made what was denominated a Provincial concession ordering the Surveyor to make out the limits to the petitioner of a tract of land of one league front by a league in depth. In like manner have the other purchasers from Indians been reduced to one league square, the surplusage not having been considered as reverting to the Indians, but as making a part of the Royal Domain which has been granted from time to time as it may have been petitioned for by other individuals.

In the claim of Stephens Lynch (Rapides Reports No. 108) it will be seen that Lynch purchased from the Attorney in fact of the Rev. Mr. McGuire, who purchased from Indians and is to be entitled to receive nothing in payment from the purchaser, until the Sale made by the Indians to McGuire shall have been ratified by the Governor. In the same claim, a Document is filed, which appears to be a transcript of a judicial investigation and decision of the conflicting claims of the said Lynch and a man named Carrizan before Cezar Archinard, Alcalde of the District, who has decided that Lynch's title is good, provided Carrizan shall not be able to produce a prior conveyance from McGuire, or his Attorney

and provided also, that the Sale from the Indians to McGuire shall be ratified by the Government.

In the Claim of Joseph Gillard (Rapides Report No. 57) in passing the Sale from the Indians to Collin LaCour, the Commandant of Natchitoches, before whom it was executed, Louis C. DeBlanc, has inserted a condition, making it necessary that the Deed shall be presented to the Governor General of the Province for his approval and confirmations.

In the claim of John Lyon for a tract of land on the Bayou Queue de Tortue, purchased from an Indian of the Attakapas tribe named Celestine, the Commandant who wrote the Deed of Sale and before whom it was executed (Louis C. DeBlanc) has included a provision, whereby it was made necessary to present the Deed for the approbation of the Governor General of the Province. In the foregoing Document strong evidence is perceived of the general understanding, that the sanction of the Governor of the Province, whilst Louisiana continued to be a Spanish Colony, was necessary to the validity of all Sales made by Indians, other than those denominated Christians, and it necessarily results, that titles held under such Sales were inchoate until the Sanction was obtained. The Sales by the Indians transferred the kind of right which they possessed. The ratification of the sale by the Governor must be regarded as a relinquishment of the title of the Crown in favor of the purchaser. May the Indians, on account of being the Aborigines of the Country, be considered as having at all times had a right to the unappropriated, or unoccupied Lands, and can their Sales for Lands which they did not occupy, be taken as vesting in a purchaser an indefeasible title?—It will be noticed that in the extract made from the testimony of Mr. DeBlanc there is an assertion, that the titles of the Indians, especially to the lands including their villages was considered under the Spanish Government as "the best of titles" and that this title was held sacred, on account of their being the Aborigines of the Country. The same witness has also said, that even the villages abandoned by the Indians were afterwards regarded as their property and subject to their disposal. The undersigned Commissioners do not perceive the orthodoxy of these assertions. If the Indian title really possessed the dignity which Mr. DeBlanc has assigned to it, a formal extinction of that title by treaty, or purchase by the French, or Spanish Government ought to have preceded all Grants made by either of these

Governments, because there was not perhaps a spot of the Country susceptible of Settlement which the roving natives had not at some past period occupied. It will be observed that in another part of his testimony Mr. DeBlanc has insinuated that this Country was conquered from the Indians. The inquiries and researches of the undersigned however, afford them no evidence of any fact which can induce them to consider the Country as having been acquired by conquest, on the contrary, the Indians seem to have permitted European emigrants to usurp the Sovereignty of the Country without making any opposition to them, and the rights thus obtained by the Crown of France and afterwards transferred to that of Spain has acquired force and validity by prescription, has been legitimated by the tacit acquiescence of the natives in that usurpation. If it should be asked what evidence exists of the Law of prescription operating to the extinction of the Indian title to Lands in Louisiana, it might be replied that the evidence is to be found in the various acts of the Spanish Government in relation to the Indians, evincing, that the Government recognized no title in them independently of that derived from the Crown, a mere right of occupancy at the will of the Government, else why was the Sanction of the Government necessary to all Sales passed by Indians, which may be clearly established by a recurrence to written document and the Testimony of Messrs. Trudeau, De Blanc and Laypard, and why was it not necessary to have such sanction of the Sales made by other subjects of the Spanish Government. The force and effect of prescription in abolishing the Indian title to Lands in Louisiana is further established by the Indians permitting themselves to be removed from place to place by Governmental authority, by their condescending in some cases to ask permission of the Government to sell their lands, and when that permission was not solicited assenting to the insertion of a clause in the Deeds of Sale, expressly admitting that their Sales could be of no validity without the ratification of the Governor. "There was no time fixed" (says Mr. DeBlanc in another part of his testimony) "in which a Deed must be presented for approbation, it might be presented in one year, or an hundred years and would always receive the Sanction of the Government. Would it not be a very preposterous regulation under any form of Government, and very unlikely to have existence under a Monarchial one, that should require the acts of an inferior to be submitted to a su-

perior Officer for his scrutiny and approbation and at the same time deny to such superior the right of rejection? That therefore, the Governors of the Spanish Colony of Louisiana had the right, not only of rejecting Indian Sales, but of actually annihilating them it is conceived will not be denied, nor is at all probable that the Governors either, would always sanction, or have always sanctioned such Sales. Let it be remembered, that in the whole extent of the Western District there are not more than three out of the many Sales made by Indians since Louisiana became a Colony of Spain, which are known to have received the Governmental sanction. And let it be known also, that a Sale that may have been rejected by any Governor, would not have been exhibited to the Board of Commissioners as evidence of Title. Therefore, altho' the Board of Commissioners have no means of producing any proof of the rejection of any Indian Sale, it does not follow that none have been rejected. The practice by Governor O'Riley of reducing the quantity of land embraced by Sales, which had been made by Indians, under the Sanction of the Government when Louisiana was a Colony of France was much more arbitrary. But if it could be established, that no Indian Sale was ever rejected by the Spanish Government, this would only prove that none had been presented but such as were admissible. Not that a case might not occur which would demand the exercise of the Governors negative. Suppose for example a Sale from the Opelousas Indians, at a time when that tribe had dwindled down to not more than twenty persons, which should embrace half the unoccupied Land in the County of Opelousas; can it be imagined that such a Sale would not have been rejected by any Governor of Louisiana? Many of the Sales from the Attakapas Indians were obtained about the time of the change of Government by which Louisiana was transferred to the United States, some of them subsequent to that change and at a time when it is known from good information, that those Indians were reduced to one single village, the inhabitants of which were short of one hundred. In some cases as will appear by the subjoined Schedule of Indian Sales, six, or eight distinct tracts of land have been sold by the same individual Indians. Is it not probable, that if Sales had been passed under circumstances such as are stated above, before the Change of Government, or prospect of such a change they would have been rejected? Although no time may have been prescribed within which the Sales of Indians were to

have been presented for ratification, the purchasers could not have been ignorant, that the regulations required that they should be presented at some time for ratification, because the condition was generally expressed on the face of the Deed, and therfore they must have known that their titles were incomplete at all times before the ratification. The undersigned Commissioners are of opinion, that there is a wide difference between the titles of such persons as have purchased lands from Indians which such Indians were actually occupying at the date of their Sales, and the titles and claims of persons who purchased from Indians not in the actual occupancy of the land at the date of their Sales. Purchasers of the first description, although the Deeds of transfer may not have been presented and of course could not have received the Governmental Sanction, may be considered as having extinguished the kind of title which the Indians enjoyed, and are therefore in the opinion of the Commissioners equitably entitled to so much at least of the land claimed as would be a full indemnity for the consideration paid for it. Purchasers of the second description would not, in the opinion of the Board, be entitled to any remuneration, because it is conceived, the Indians in such cases were selling a thing to which they had no kind of title. The investigation of claims for lands purchased from Indians seem to have brought into view four distinct classes— first, claims for lands purchased from Indians denominated Christians, whose Sales are generally for small tracts, of such extent as an Indian and his family might be supposed capable of cultivating, passed before the proper Spanish Officer and duly filed of Record, these Sales are believed to have been valid, by the usages of the Spanish Government without ratification being necessary. Secondly, claims for lands purchased from some tribe, or chief of some tribe of Indians, the Sales of which may have been ratified by the Governor of the Province. These are also considered as valid. The Indian sale transferring their right. The ratification by the Governor being regarded as a relinguishment in favor of the purchaser of the right of the Crown. Thirdly, claims for lands purchased from Indians of the description last mentioned, who from the evidence adduced before the Board shall appear to have been in the actual occupancy of the land at the date of the Sale, but whose deeds of Sale may not have been presented for the ratification of the Governor. In this case the Indians are considered as having transferred only the right of oc-

cupancy which they held at the will of the Government, the title is incomplete, but the purchaser supposed to have an equitable claim for the confirmation of his title to so much of the land claimed as would be a full indemnity for the consideration he may have paid. Fourth and lastly, claims for lands sold by Indians of the last description, who did not occupy them at the date of their Sales and whose Sales have not been ratified by any Governor of Louisiana. Such Sales are considered as vesting no title in the purchasers (unless accompanied by some equitable circumstance in their favor) and in the Opinion of the Board of Commissioners ought not to be confirmed. Of this last class is the claim at present under consideration, unattended by any circumstances known to the Board of Commissioners, which might entitle it to a confirmation.

Land Office at Opelousas.
State of Louisiana, 27 January, 1826.

I do hereby certify the foregoing to be a true and correct copy of the original filed and of Record in my Office, reported by the Board of Commissioners appointed for the purpose of ascertaining and adjusting titles and claims to lands in the Western District of the Territory of Orleans, now State of Louisiana, in their report of claims for the County of Opelousas on the 6th of April, 1815 to the Honorable Albert Galatin, Secretary of the Treasury of the United States. And I do hereby further certify that the same has been acted upon and approved by Act of Congress passed the 29th day of April in the year 1816.

Given under my hand and private seal, at my Office aforesaid, the day & year aforesaid.

(L. S.) (sig.) VALENTINE KING.
Register.